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The Development of the Law

Judea, Babylon, Phœnicia, Greece, Rome, England, and our own America, all measure their civilization by the development of their law. For centuries all the human race was centered in the lawyers and priests. To them all classes, from King to peasant, turned for instruction and information. Whatever of progress was made, whatever of civilization was achieved, was directly due to the labors and studies of those men versed in the law. As commerce and travel expanded, the commercial law developed to meet the new complexities of trade. As human rights and liberties advanced so the criminal law became more humane.

I do not refer to those dark periods of history when the savages from the North overran Europe and ruthlessly blotted out the civilization of Greece and Rome. Under Attila, Alaric, and Visigoth and other savage chiefs there was no law, no learning, no art, no civilization. Might was right. Animal cunning and brutality supplanted intelligence. Roman law and jurisprudence were submerged by the "unmitigated barbarity of the sword."

Those periods were but relapses from the steady onward progress of the human race. Man was created to live in organized communities, and such communities cannot exist without rules of conduct for all members thereof. The degree of progress in the community is coincident with the development of that community's laws. Human nature has been repeating itself through all the ages. As often as civilization has been destroyed by ignorant savagery, humanity has commenced anew the slow rebuilding of the temple of organized society.

It required twelve hundred years for humanity to recover from the debauch of ignorance, cruelty, and oppression brought upon the world by the barbarians of the fifth century. Civilization, under the Roman law and the Justinian Code, had reached its highest development,—a development which we of the twentieth century do not surpass in many important respects. Except for its system of law, that civilization was practically blotted out by the northern barbarians. The art, the education, the philosophy of Rome and Greece disappeared. In their places there grew up in Europe the abominable feudal system, whereby the people were no more than slaves of the feudal barons, and all land belonged to the Crown.

Throughout those Dark and Middle Ages, the learning and jurisprudence of Rome and Greece were preserved by the lawyers. Whatever of that old civilization is saved to us,—and a considerable part of the Justinian Code is in our law to-day,—is due to the lawyer-priests of Medieval Europe.

So, we find all through history that the lawyer has been of the leaders in every age. It was a lawyer who compiled the great English common law. Lawyers prepared our Declaration of Independence, wrote our Federal Constitution, and drafted most of our statute law in force to-day. All our boasted modern progress would be of small use to us but for the lawyer. Our wonderful inventions, our sciences, our chemistry, our mechanical triumphs, probably would have been evolved just the same; but it required the work of lawyers to build up a legislative railway of commercial law that would permit the full development and transportation of those inventions from the laboratory to the people.—Harlan A. Bushfield.

THE LAW—By J. S. Sargent

Israel, under the mantle of Jehovah, is fulfilling the mission of his race in yielding himself to the exclusive study of the Law.

Case and Comment

Vol. 24 MAY 1918 No. 12

The Nature and the Future of International Law[1]

BY MUNROE SMITH

RETURNING, in the early days of the war, from a belligerent Germany, through a mobilized Switzerland and a partly mobilized Italy, to an America that was still unperturbed and unprepared, I revisited the famous Museum of Naples. In one of the central corridors, I noticed an ancient mural inscription, which I had doubtless seen before without appreciating its significance—an inscription of the time of Augustus: "To perpetual peace." Thus, even in warlike Rome, and more than nineteen centuries ago, after a series of wars that had shaken the then civilized world from the Alps to the African deserts and from the Pillars of Hercules to the Nile, as after every great war that has since devastated Europe, men's minds were turning with inextinguishable hope to the vision of a warless future.

I

To keep the peace is the prime and perpetual problem of law. From prehistoric ages, when loosely aggregated tribes first sought to limit feuds between kinship groups and to substitute compensation for vengeance, to our own day, when we are still striving to check the unregenerate human reversion to violence in economic struggles, and to persuade or compel the adjustment of labor troubles through negotiation or arbitration, the fundamental command of the state has been the pretorian *vim fieri veto*. This is also the goal, yet unattained, of that body of law, ancient in its beginnings but still imperfectly developed, which we call the law of nations.

To describe a law that is construed and applied in the courts of every civilized state and in international courts of arbitration; a law whose rules are to be found not only in recorded precedents but also in resolutions of international congresses; a law that has been elucidated for three centuries by the labor of hundreds of trained jurists, until its sources and literature form a library far larger than that of many an existing system of national law—at least twenty times larger than the library used in compiling the law books of Justinian—to describe such a law as imperfectly developed seems paradoxical. Many writers, however, go much further, denying that the law of nations deserves the name of law. They call it international morality.

[1] Presidential address, at the annual meeting of the American Political Science Association, Philadelphia, December 28, 1917. Reprinted by permission from American Political Science Review, February, 1918.

Others deny that it merits even this name. Recognizing no world ethics, they assert that international law is nothing more than a body of usages, morally binding upon the single state only in so far as the state accepts them, supplemented by agreements which each state concludes of its own free will and cancels at its own sovereign pleasure.

All these writers, of course, admit that in so far as any state binds itself by international agreements, and so long as it adheres to these agreements, and in so far as the rules of international morals or international usage are recognized by the legislatures or courts of the single state and enforced through its own administrative or judicial processes, what we call international law is indeed law, but only because it is national law. When a controversy arises between states, treaty provisions that are repudiated by either of the parties and rules that are not binding upon both parties by their own domestic law are not law at all, because there exists no superior organized force to constrain obedience.

The assumption that underlies these assertions is that no rules of social conduct can be regarded as legal rules unless they are supported by superior force, exercised by some generally recognized and relatively permanent superior authority. It is further maintained by many writers that law, properly so-called, not only must be enforced, but also must be established, by such an authority. To this last contention, however, legal history lends no support. Little national law was originally established by organized political authority, unless recognition is to be regarded as establishment. Usages older than courts or legislatures were interpreted by the earliest courts and embodied in the earliest legislation. Even in the later stages of legal development changes of usage have been similarly recognized.

Among the writers who maintain that international law is really law, some insist, and with truth, that physical coercion is not the only means that a society employs to insure obedience to its laws, nor is it always the most effective means of coercion. Ridicule of unusual conduct and disapproval of antisocial conduct exercise a psychical pressure that is often more effective than fine or imprisonment. If social disapproval is sufficiently strong to entail ostracism, and if this begets a boycott, a society exercises the same economic pressure that a state employs when it supports its laws with pecuniary fines or with confiscation of property. Even in the modern state, the law that is made or recognized by political authority would be far less generally observed if the penalties that are imposed on antisocial conduct by the physical power of the state were not supplemented by the pressure of public opinion. These writers point out that international law has an effective sanction in the sentiments and opinions of civilized mankind, and that no state, however powerful, can without serious risk antagonize the civilized world.

Between those who assert that rules enforced by psychical pressure may be regarded as legal rules, and those who insist on the criterion of forcible coercion by a political superior, an intermediate position may be taken. It may be admitted that social imperatives can properly be regarded as legal only when they are supported in the last instance by force, without admitting that this force must needs be exercised by an organized political authority. If a society that has no political organization, or none that is efficient, exercises physical coercion, either through spontaneous general action or through extemporized organs, to punish acts that are regarded as antisocial, or if it recognizes the right of its individual members to exercise physical coercion against offenders and protects them against retaliation, it may well be maintained that social usages thus sanctioned are legal.

From this point of view it is possible to distinguish tribal law in its earliest stages of development from tribal manners and morals, and to find in early tribal usage a core at least of true law. From this point of view it may also be said that some at least of the rules that govern the relations between independent modern states are to be regarded as legal rules.

Not a few writers have compared international law in its present stage of

development with national law in its infancy or adolescence. In the law of nations, as in all early law, the greater part of the recognized rules rest on precedent; they are customs. In either system, law may be supplemented or even changed by agreement, and agreement must in principle be general. Decision by a majority of voices was no more recognized in the Teutonic folkmoots or in the Polish Diet than in the international congresses of to-day. Agreements bound only those that agreed. In both the historic instances cited, however, the principle of general consent was modified by the greater influence of the more important members of the community. In the Teutonic folkmoot, a handful of common freemen would hardly attempt to groan down a proposal supported by all the chiefs. In the Polish Diet an ordinary nobleman would hesitate to interpose his *liberum veto* against a resolution supported by all the magnates. To-day the general agreement of the more important states sometimes suffices to establish a new international rule.

The most striking analogy between the society of nations and early tribal society is to be found in the fact that the early tribe was not primarily a society of individual human beings, but a society composed of more or less independent groups. The Teutonic tribe, for example, was a society of kinship groups. The legal molecule was the *sippe*, for which you will permit me to use the good old Saxon word "sib." The atoms in this social molecule were disregarded. As in the society of nations a wrong to an individual is a wrong to his state, so in the Teutonic tribe an injury inflicted on an individual was an injury inflicted on his sib. The absence or imperfect development of superior political authority inevitably leaves the redress of wrongs to self-help; and in the Teutonic tribe this was the affair of the sib, as in the society of nations it is the affair of the state. In the one case the ultimate means of redress was sib feud; in the other, it is war. To the Teutons, feud between sibs and war between tribes were essentially the same thing; the only difference was in the scale of operations.

As early as the fifth century, however, and probably earlier, the Teutonic tribe had taken a step forward which the society of nations is to-day endeavoring to take. It had suppressed feud in the case of minor injuries, compelling the injured sib to come into the popular court and demand penalty. It permitted feud only in cases of "blood and honor." And even here, if the injured sib was willing to waive vengeance and sue for penalty, the offending sib was forced to answer in court.

Again, in dealing with acts that clearly injured not only a sib but also the whole tribe, the Teutons had established in a prehistoric period the rule that such an act put the offender out of the peace of the tribe, and that any freeman might slay him with impunity. In such a case the slain man's sib was restrained from raising feud. The list of offenses recognized as crimes against the tribe was indeed a short one, but the list of offenses recognized to-day as crimes against the world is still shorter. Piracy is perhaps the only clear case. The attempt to assimilate the slave trade to piracy has not been fully successful.

A very important difference between modern international and early national law is found in the fact that early society was working out slowly and with infinite travail those notions of substantive right that are to-day familiar to every civilized human being. Courts were instituted to terminate controversy; justice has been a by-product. From this point of view, we may compare the society of nations to a community of at least moderately civilized human beings that has no political organization or none that is able to maintain order. Such was the situation —if I may cite an ancient instance taken from records readily accessible but less frequently consulted than they should be by modern students of politics—of Israel, in the days when it had escaped from its long Egyptian bondage and had not yet developed any political organization superior to that of the tribe. In Egypt the Israelites had become acquainted with a higher civilization, but after conquering and settling Palestine they had, as we are told, "no king, and everyone did that which was right in his own eyes."

An outrageous breach of hospitality,—that is, a breach of the customary law which alone made intertribal intercourse possible,—a breach coupled with rape and murder,—so stirred the anger of all Israel against the tribe of Benjamin, in whose territory the outrage occurred and which refused to surrender the criminals, that all the other tribes united to exact reparation. Although the allied tribes raised by conscription forces superior to those of Benjamin, they encountered bitter and obstinate resistance. Benjamin seems to have been exceptionally prepared for war. It had what may be called superior artillery; it had "seven hundred men, left-handed, who could sling at a hairbreadth and not miss." The allies suffered two serious defeats, but they prosecuted the war until Benjamin was conquered. Then the chastened tribe was restored to its place in the society of the tribes of Israel.[2]

In continental Europe, in the later middle ages, there were many countries in which law was not efficiently enforced by determinate political superiors. In this period we have repeated instances of the formation, in emergencies, of leagues to enforce peace. Some of these, such as the Hansa, developed into powerful federations. Others like the Vehm, which may be described as a great central European vigilance committee, served their temporary purposes and disappeared. The Vehm developed no determinate superior that could be called sovereign, but the rules it enforced, until it succumbed to internal corruption and decay, were well-recognized legal rules and their enforcement was as efficient as in the average modern state.

We have had similar experiences in our own country. In the settlement and development of the West, men imbued with notions of civilized justice were thrown together, in frontier settlements and in mining camps, beyond the pale of organized political authority. They enforced such rules as were necessary for efficient co-operation by reverting to primitive processes, to self-help and to lynching. In some instances, notably in California, they organized vigilance committees. Whether the rules they enforced, and enforced very effectively, should be called law, is of course a question of definition. An apparently prosperous New York business man once told me that he did not believe in government or in law; he thought they did more harm than good. In his youth he had lived in western mining camps and had found that "they got on much better before the law came in." I asked him what they did with claim jumpers and with horse thieves. He replied that claim jumpers were usually shot and horse thieves usually hanged. He was unacquainted with the formal philosophy of law or of politics; but he was one of Touchstone's "natural philosophers," and his theory of law was that of the analytical jurist of the most formalistic type.

In the society of nations, the redress of an international wrong by the concerted action of a number of states is a significant step. Such action has been taken more than once against small states, and against nations imperfectly organized or temporarily disorganized by internal conflicts. The most recent illustration is the concerted action of the Powers to protect their legations in China against the Boxers. That such concerted action is possible against more powerful offenders has been demonstrated in this war, in the gradual extension of the alliance against the Central European Powers. Germany and Austria expected to fight two European Powers and two or three small European states. To-day they see arrayed against them six Powers and thirteen states containing the majority of the inhabitants of the civilized world. This vast league of nations has been called into being and into action by Germany's disregard of treaties and of international law. The moral reaction began with Belgium; but more decisive than this or any other offense Germany has committed in arousing the active hostility of the world—clearly decisive in bringing the United States into the war—is the ruthless and indiscriminate destruction of enemy and neutral merchant vessels. German submarine warfare against ocean commerce not only affronts the general sense of justice and outrages the universal instincts of hu-

[2] Judges, chapters xix–xxi.

manity, it also disturbs the economic intercourse of the world. It not only inflicts material damage, direct and indirect, in every quarter of the globe, it also imperils to an unprecedented degree the agencies of intercourse which gave birth to civilization and by which civilization is still chiefly maintained. This is the principal although not the only reason why Germany finds itself confronted by something very like a World Vigilance Committee.

In every such concerted action of the still unorganized society of nations, we find, if I may revert once more to the analogy between international and early national law, a forward step resembling that taken by the tribe when it began to react in its entirety against offenses for which there had been previously no redress except by feud. In the development of tribal law, such reactions indicated that offenses previously regarded as torts were beginning to be viewed as crimes. Concerted action by the society of nations against an offending state seems to imply a recognition that a state may be held accountable not only to other single states which it has directly injured, but also to the world for a crime against civilization.

II

There is to-day a widespread feeling that the fabric of international law has fallen into ruin and that it must be rebuilt from the foundations. This feeling is not new; it has appeared in every general European war; it was widely expressed during the Napoleonic wars. When men's minds are engrossed by war, they forget that the rules they see overridden are only a part, and not the most important part, of the law of nations. It is only the law of war that is menaced; the law of peace is unassailed and will resume its sway when peace returns. And it is a hasty judgment that affirms that even the law of war has broken down when, as is the case to-day, many of the combatants have been drawn into the struggle by Germany's disregard of the restrictions imposed upon warfare between civilized nations, and are fighting, in part at least, for the maintenance of the law of war. Only if Germany wins, and its offenses remain unpunished, will it be possible to assert that in this world war the law of war has been overthrown.

After this war, it will doubtless be necessary to fill some gaps in the law of war. The use of submarines and of air craft must be regulated. The right of retaliation must be defined and limited. It must be made clear that the violation of neutral rights by one belligerent gives the other no right to violate the same or other rights of the same or other neutrals; and even as between belligerents some check must be imposed upon reprisals that cannot properly be called retaliations,—upon reprisals that are clearly disproportionate in their illegality or in their inhumanity to the alleged offenses by which they are evoked. In the Brussels conference of 1874, it was proposed that "the choice of means of reprisal and their extent should bear some relation to the degree of violation of law committed by the adversary;" that they "should not exceed the violations committed." Without some such check, reprisals and counter reprisals, each exceeding the other in illegality and inhumanity, tend to carry warefare back to its earliest and most barbarous form. There must also be an examination and a limitation of the conception of military necessity. An unlimited right of reprisal and a right to violate the rules of war whenever, according to a purely military judgment, there exists a necessity for their violation—these alleged rights reduce all rules of war to scraps of paper.

Acceptance of such restrictions will be facilitated by the experience of this war. There seems to be a growing recognition that excessive cruelty and inhumanity do not pay. The Austrian jurist, Lammasch,[3] has recently written:

"After the conclusion of this war, all parties will have sufficient occasion to consider whether the direct advantages they have derived from acts justifiable or excusable only from the point of view of reprisal or of necessity outweigh the indirect disadvantages that they have incurred."

[3] *Das Völkerrecht nach dem Kriege* (Christiania, 1917), pp. 17 et seq.

He cites the German jurist Zietelmann as saying: "In the great politcal game of the future every concession to humanity, the avoidance of rivalry in cruelties, will bring rich gain."

There is indeed one branch of international law that needs to be built up from the foundations, not because it has been overthrown in this war, but because its construction had hardly begun. This is the branch of the law that deals with the maintenance of peace. Its development will require limitation of the war-making power of the single states, not solely by self-imposed restrictions, but also by the law of nations. Proposals that are in process of formulation in many countries contemplate the prohibition of war in what are termed justiciable cases and the postponement of war in other cases. If a controversy between states turns upon a disputed interpretation of international law or of a treaty, or upon disputed facts, the matter is to be referred to a court of arbitration. If the controversy springs from a collision of interests, there is to be no resort to war until an attempt has been made by mediators to discover a settlement that may prove acceptable to both parties.

In the outbreak of most wars another factor is notoriously operative—a factor which may be associated either with disputed questions of law or of fact or with collisions of interests—the point of honor. In the opinion of some writers, the point of honor should be disregarded. This, in the present state of general feeling, seems impossible. According to other writers, this point also should be submitted to arbitration, in order that it may be determined by an impartial authority whether the honor of the aggrieved state has been impaired and how it shall be rehabilitated. It is well known that in some countries, where duels are still fought, at least in certain social classes, similar arbitrations are found possible; but it must also be noted that in many if not in most cases the so-called courts of honor find that the only possible redress is by conflict. The majority of writers appear to hold that the point of honor can be dealt with only through mediation.

This program closely follows that by which feud was checked in early tribal society. Adjustment of quarrels without armed conflict was originally obtained only by direct negotiations or by mediation. Submission of such controversies to a court was originally a matter of agreement; it first became compulsory in minor cases; ages passed before feud was suppressed in cases of "blood and honor." It was not deemed cowardly that the offender should buy his peace, but that the wronged party should sell his vengeance seemed base. National feeling to-day is quite similar. When, for example, Italian citizens were lynched in New Orleans, our government was prompt to offer pecuniary compensation; but Italy was loath to accept any satisfaction save the punishment of the murderers.

All these proposed rules may be established by treaties. The United States, for example, has already negotiated many such treaties. They may be established by international congresses; but the resolutions of these congresses will be no more than treaties between each ratifying power and all the others. What security will there be against breaches of such treaties?

In minor matters such treaties will doubtless be generally observed. Nations rarely go to war for trifles; if trifling causes have been alleged, these have been pretexts. What guaranty will there be, however, that in disputes not justiciable, in collisions of interests in which national passions are fired by the assertion that the national honor is at stake, a powerful state will stay the march of its armies until mediators have considered alleged grievances, investigated disputed statements of facts, and submitted to each nation concerned their findings and their plan of settlement? What convincing arguments can be opposed by statesmen to the military authorities if these allege as they always allege when they think themselves better prepared than their adversaries, that every day's delay strengthens the prospective enemy and lessens their own chance of victory?

It is proposed to-day in many quarters that the society of nations shall act collectively through permanent organs to

enforce submission to the proposed rules. More or less elaborate schemes have been formulated for the establishment of the requisite organs. The idea is not new, nor is there much that is novel in these plans. Similar proposals have been made from time to time during the past six centuries. What is new is the wide support given to these plans and the indorsement they have received from responsible statesmen.

The crucial question is that of sanctions. We shall gain relatively little, it is urged, by establishing new international organs unless it is possible to give something more than moral authority to their decisions and mandates. The decision that a controversy is justiciable must be followed by some joint action of the civilized world against the state that refuses to submit its case to arbitration. The prohibition of hostile action in other cases, until reasonable time has been given for mediation, must be followed by some joint action against the state that refuses to obey the injunction. The first question is: What shall be the nature of the joint action? When this question is answered, a second arises: Can the joint action required be secured? Who shall coerce unwilling neutrals to join in coercing their quarrelsome neighbors?

This last question needs only to be stated to be answered. In the society of nations, as it exists to-day, any such general coercion is unthinkable. All that can be deemed feasible is to affirm the legal right and the moral duty of nations not primarily interested to join in penalizing breaches of the proposed rules. How far they will recognize such a duty and exercise such a right will depend in part upon the nature of the action they are expected to take.

On this point, there are many proposals. It is suggested that joint action should be confined to measures short of formal war. In case one party accepts and the other rejects arbitration; in case either party, after arbitration, refuses to accept the judgment of the arbiters; in case a state disregards the injunction to refrain from hostile action pending mediation, the states not primarily interested are to have the right and it shall be their duty, upon the outbreak of the war, to say to the offender: We shall allow no goods to be exported from our territories to yours and we shall permit you to float no loans within our jurisdiction. To the other party involved in war, they may and should say: You may draw from our territories whatever supplies you need, including munitions of war, and you may borrow from our citizens whatever funds they are willing to lend you. This differential treatment, it is suggested, may be carried further; the citizens of states not primarily interested may be forbidden to enlist in the army or navy of the offending state and may be encouraged to offer their services to its enemy.

Other supporters of coercion go much further. According to their plans, it shall be the right and the duty of the society of nations to take military action against the offending state. The economic sanctions are to be supported by the sanction of physical force. It is even suggested that a world army and a world fleet, composed of contingents furnished by the several states, shall be organized and held in readiness for immediate use against states that disregard the proposed international rules regarding arbitration and mediation. This proposal is not infrequently coupled with schemes for the reduction of national armaments.

It is to be noted that some at least of these proposals involve the establishment of a world government. It is not proposed to organize a world state with federal government, but there is to be something approaching a world confederacy. If this confederacy is to hold periodical legislative congresses; if it is to have a supreme court, a council of mediation, and a board clothed with a certain degree of executive authority—a board which in one of the plans is called (most unwisely, it seems to me) a "ministry"—and if it is to have a federal army and navy, it will have much of the outward semblance of a world state; and its powers—on paper, at least—will not be sensibly inferior to those exercised by some of the looser national confederacies that have existed in the past and that have finally developed into federal

states. They will not be sensibly inferior to those exercised by our own Union under the articles of confederation.

That some such world organization will ultimately be established is not improbable. The development of law has always been accompanied and conditioned by the subjection of smaller to larger groups—of kinship groups to tribes, of tribes to small states, of small states to national states—and the development of international law may well bring similar subordination of the single states now sovereign to the authority of a world league. That any such world organization will be developed in the near future, few students of history and of politics will deem probable. The subordination of smaller to larger groups has always encountered intense and obstinate resistance—a resistance based on that human instinct which is most essential to efficient co-operation, the instinct of loyalty. When we remember what stretches of time have been needed to transfer allegiance from each smaller to each larger group, when we recall that in most cases this transfer of allegiance has been accomplished only through war, we may well conclude that it will be no easy task to imbue the people of the great modern national states with the conviction that they owe any real allegiance to humanity, and that it will be even harder to convince them that this allegiance is in any respect higher than that which they owe to their own national states.

It will be easier to carry resolutions through international congresses and to secure their general ratification than to establish new methods for their enforcement. It will be easier to obtain general recognition of the right of disinterested states to insist on arbitration or on mediation, when war seems imminent, and to participate in joint action against an aggressive state, than to secure formal pledges of eventual participation in such action. It will be less difficult to secure pledges to join in a boycott against future offenders than pledges to take part in military action. It will be far less difficult to establish permanent boards for arbitration, for investigation, and for mediation, than to clothe them with real powers. Plans for facilitating voluntary co-operation will encounter far less opposition than proposals that suggest the establishment of anything resembling a world government.

In pointing out some of the obstacles that will be encountered in any effort to organize the society of nations and to give more efficient sanction to its laws, it is far from my purpose to discourage such efforts. If they are wisely directed, I believe that substantial progress may be achieved. The temper of the world is far more favorable to such efforts than at any former period. Never before were the nations so closely knit together by material and spiritual bonds of every kind as in the years immediately preceding the outbreak of this war; never before has it been so convincingly demonstrated as during the past three years that the common interests impaired by war outweigh any separate and selfish interests that war can possibly promote; never before have neutrals so clearly seen that they have a vital concern in the maintenance of the world's peace. Until now, the attitude of neutral governments towards a war has resembled that taken in 1439 by the authorities of Namur towards a local feud: "If the kin of the slain man will and can avenge him, good luck to them, for with this matter the Schöffen have nothing to do, nor do they wish to be reported as having said anything about it."[4] In the present war our government found such a neutrality of thought and of word increasingly difficult, and neutrality in conduct was ultimately found to be impossible.

For the successful working of any international organization to maintain peace it is essential that every civilized state should not only claim the right, but should also recognize the duty, of aiding in its maintenance. This involves the acceptance of the international point of view, the development of the international mind. In this matter all who teach and write in the fields of history, sociology, economics, politics and law have grave duties. . . .

[4] Brunner, *Deutsche Rechtsgeschichte*, vol. I. sec. 21, note 11 (p. 159).

The Right of Angary

BY FRED H. PETERSON

of the Seattle Bar

IN THESE extraordinary times legal questions arise that are seldom or never thought of in days of peace. When the public press announced that our government, in concert with other belligerent powers, would take over 1,000,000 tons of Dutch merchant shipping, of which about 600,000 tons were then in the various ports of this country, it would naturally occur to a lawyer to inquire whether such act had any justification or support by virtue of acknowledged international law. Belligerent governments are much like litigants; neither one will concede anything as correct, if the opposing power insists upon a right or privilege. This must be so in the nature of things; if a country is fighting for its very national existence, no concessions can be made to the opposing belligerents; and perhaps, in extreme cases, not even to a neutral.

As soon as the Allies asserted the right to use the shipping of neutrals, the Central Powers instantly denounced such claim of right as a violation of international law, and without any justification. The historical facts appear to be against the Central Alliance, and especially from a legal standpoint Germany would be estopped to deny the right to seize vessels, for in a previous war the Teuton government did use and destroy ships and other neutral property under the "Right of Angary."

What is the Right of Angary? The word "angary" originated with the Persians, passed through the Greek, and became known to the Romans as angarius —a mounted courier—a servant who was intrusted with the delivery of government messages. While making his trips by land and by sea, to perform his duties expeditiously, the Grecian law empowered him to impress horses, vehicles, and ships into his service. The Romans conferred the same right upon their public message bearers. This right to forced service or contribution was called by them "angaria"—hence the Jus Angariæ, and the French le droit d'angarie. Glenn, International Law, 337.

This right to subject private property to the use and service of superior authority was recognized in various ways, and the underlying principle of the Angarian law may be traced as follows:

1. Under the Roman law it meant forced service—angaria—of a public officer to requisition for state purposes, especially the right of a public officer to requisition the use of vehicles, horses, and ships for the business of the state. Dig. 50.

2. In Feudal law it implied any troublesome or vexatious personal service which the tenant was required to perform for the owners of the fee. Brown's Law Dict.

3. International law defines the Right of Angary as the right possessed by a belligerent to use or destroy, if necessary, any property of neutral subjects, or of a neutral power, located within the territory of a belligerent.

The right of angary has been recognized by The Hague Convention, and specially extended to cover modern implements of commerce,—such as railways, telephones, and telegraph systems. Convention 1899, § 53.

Section 19 reads thus: "Railway material coming from the territory of neutral Powers, whether it be the property of said Powers or of companies or private persons, shall not be requisitioned or utilized by a belligerent, except when and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to the country of origin." Compensation is provided for its use; a similar provision is found with reference

NAVAL OFFICERS TAKING OVER THE ZEELANDIA FOR THE UNITED STATES GOVERNMENT

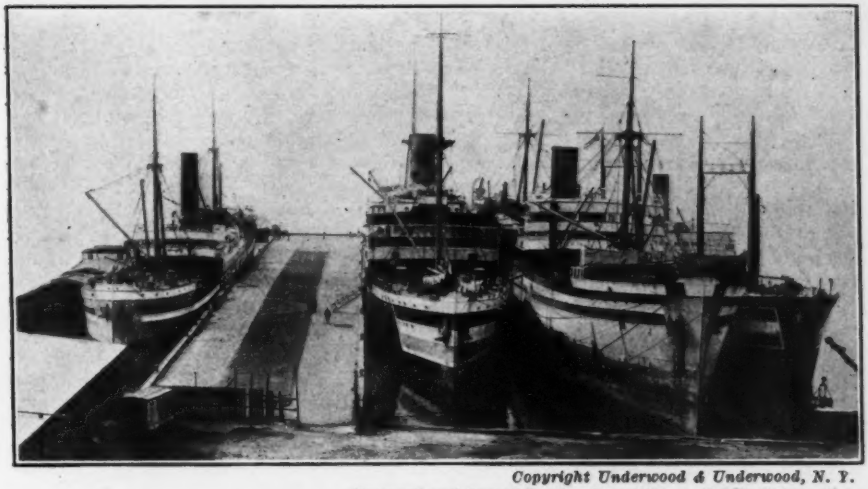
to neutral shipping in the ports of a belligerent country. Wilson & T. International Law, 423.

The Right of Angary has been often asserted. France carried troops and supplies in requisitioned, neutral ships to Egypt in the campaign of 1798. Napoleon ordered the seizure of neutral vessels in the harbor of Marseilles when necessary for military purposes.

The most conspicuous instances of the taking of neutral property for war uses occurred in the Franco-Prussian War of 1870–1. Many railway cars of the Central Swiss Railway were taken by the Germans in Alsace and appropriated for war purposes, under claim of military necessity; these cars were restored and damages paid for any loss, and compensation made for their use. The same was done with Austrian railway cars and equipment.

Again, the Germans wanted to block the navigable channel of the River Seine; the general in command at Rouen ordered the seizure of a number of British ships for that purpose and sank them at Duclair. The German officer tried to bargain with the masters of the ships for the value of ship and cargo, pay the price, and then sink the vessels. The ship captains protested, refused to consent, which was "considered an infraction of neutrality" by a peculiar twist of belligerent reasoning. Having failed to come to any mutual agreement on the value of these ships, they were sunk by gunfire while some of the crew were yet aboard, although, apparently, no one suffered injury. Hall in his work on International Law, pp. 742–3, refers to this incident, making the following comment: "The English government did not dispute the right to act in a general sense in the manner which they had adopted; and notwithstanding the objectionable details of their conduct, it confined itself to a demand that the person whose property had been destroyed should receive the compensation to which a despatch of Bismarck had already admitted their right. Prince Bismarck, on his side, in writing upon the matter, claimed that 'the measure in question, however exceptional in its nature, did not overstep the bounds of international warlike usage. The report shows that a pressing danger was at hand, and every other means of meeting it was wanting,—the case was, therefore, one of necessity.'"

Here is the keynote to the Right of Angary; it is based upon the actual mili-



FOUR OF THE DUTCH SHIPS TAKEN OVER BY THIS COUNTRY

tary necessity at the time and place, as viewed by the commander of the belligerent forces or by the government officers in performance of their military duties. It appears from the press that the authorities of Holland have been asked to consent to the proposed seizure of their ships, and that they object and enter a protest. It was no doubt good policy and most courteous and greatly in contrast with the practice that has prevailed in the past; for it certainly is highly commendable that this nation should be the most punctilious in observing international obligations and exercising the greatest care in asserting the right of taking the shipping of a friendly, neutral nation. *But the right to take and use the neutral vessels within our harbors for military purposes, without the consent of the owners, is beyond question.* Whether there exists a military necessity to justify such taking must be decided by the belligerent, and is not subject to debate or review. The belligerent is in duty bound to return all seized property as soon as the emergency has passed, pay for its use, and make proper restitution for all loss and damages. This Right of Angary, however, should be definitely defined, and not left to ancient custom and tradition, and be governed by whatever belligerents may have done in cases of emergency in previous wars.

The horrible catastrophe to humanity, —the result of this monstrous world conflict,—is directly traceable to the entire absence of a proper, enforceable Code of International Law. We write and talk of the law between sovereign, independent nations as though it were a reality; to be observed as positive, statute law; and as if a breach of it would mean condign punishment to the transgressor; while in fact the word "international law" is a misnomer. A set of rules that is based on tradition and is indefinite; that no one need obey, and if violated the offender cannot be punished,—has not attained to the dignity of law. A high authority,—Sir Charles Darling, one of the ablest British judges,—wrote a very readable book published in 1914, entitled "Scintillæ Juris." On page 7 he discourses on this subject as follows:

"There is, properly speaking, no such thing as international law. The fact is, that there is a code recognized all the world over, in accordance with which the judges (i. e., the Sovereigns) and the jurors (i. e., the people) of every country invariably give their decisions. For convenience of those who may have in their law libraries only the ten command-

ments and perhaps some odd volume of Grotius or Puffendorff, I will here set out the whole of this International Code in its integrity: La raison du plus fort est toujours la meilleure."

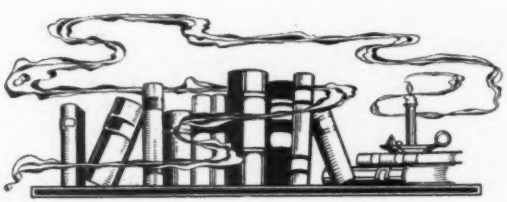
That is exactly where the trouble is,—the unrestrained and unregulated reason of the strongest has always been the best and right. Or, as a common phrase expresses it, "Might makes right." This has been for ages the governing principle of international law.

Differences and disputes are bound to occur between nations as between individuals. The present system of settling international questions is fully as absurd and criminal as the ancient wager of battle for the adjustment of individual rights. The folly of settling private disputes with clubs between two men fighting from sunrise to sunset was apparent to men for ages, and yet it continued to be the law for centuries. 3 Blackstone, 337.

While the cost of this war in blood and treasure, to say nothing of indirect losses, is beyond human comprehension, there will yet be compensations to humanity and, probably, greater than we can realize. When this conflict ends, a proper Code of International Law may perhaps be adopted by all the powers of the world, regulating the rights of nations with one another on land as well as on the sea; providing for a tribunal to determine all international questions and disputes, with the authority to enforce obedience, and the observance of whatever decree may be rendered.

If such a high International Court is ever attainable, surely at the close of the present fearful conflict, the adoption of such a code, and the establishment of such an august court for the administration of international law and justice, should be most heartily welcomed by all the peoples of the earth. For, as wager of battle for the settling of private disputes has gone into the discard, so surely will a more enlightened civilization devise some method which will render it absolutely impossible for any unprincipled, ambitious autocrat to lead and force to slaughter millions of his fellow men!

Fred H. Peterson



Causes of Crime and Remedies Therefor

BY HARRY B. MILLER

Prosecuting Attorney of the City of Chicago

[Ed. Note.—Mr. Miller, in view of his experience as City Prosecutor of the City of Chicago, presents in the following article his opinion as to the causes of crime and the appropriate remedies.]

IN ORDER to properly solve the criminal problem it will be well to ascertain the cause or causes for lawlessness. After very thoroughly discussing this matter with Mr. Rupert Bippus, assistant city prosecuting attorney, who has given the subject much consideration and study, it seems to me that there are three classes of lawbreakers or criminals; namely, (1) the mental defective, who is dangerous; (2) the wilful and wicked miscreant; and (3) the careless youth who unintentionally develops into a criminal. The first class are unfortunates, who can hardly be blamed for their criminal acts. Judge Harry Olsen, chief justice of the municipal court, I believe has the right solution for taking care of such criminals through the psychopathic laboratory, where they are properly examined, classified, and placed in institutions where they can either be cured or safely guarded. The habitual and wilful criminal of course should be severely punished to the fullest extent of the law. The careless youth who, with spirit of bravado, commits an offense, should be carefully watched, and if possible kept from becoming a criminal, but should be given sufficient punishment to convince him that he is on the wrong track. If lawbreakers are not punished, the fault lies with either the authorities or the law, and perhaps with both.

American jurisprudence has frequently been criticized for its so-called red tape and delays in criminal cases. This is the fault of the law. On the other hand, the accused should receive all the protection guaranteed by the Constitution and the law of this country. One of the causes of boldness of vicious characters and criminals is a lack of respect they have for law and those charged with the enforcement of the law, and this is due partly to the technicalities or so-called red tape of the law, and partly to the characters of some of the authorities.

The first authority having anything to do with the elimination or suppression of crime is the police department. The action of that department will have much to do with whether or not criminals will be punished. Criminals should be quickly apprehended, securely guarded pending trial, and have immediate arraignment and a speedy trial. It is the duty of the police department to see that the accused is charged with the proper offense, and to give the name and addresses of the witnesses and such other evidence as may be secured to the prosecuting attorney.

Where the police are satisfied that the accused is a vagrant, pickpocket, or a thief, they should book him under the State Vagrancy Law, because a conviction of that law carries with it a prison sentence, whereas a violation of the city ordinance provides only for a fine. A pickpocket does not mind being fined, as his associates very quickly pay the fine. To the professional thief or pickpocket the mere payment of a fine, even though it be the maximum amount provided for by our Code, would to him be considered but little more than an overhead expense to the continuance of his operations,

whereas a prison sentence would absolutely prohibit his further operations.

The next official is the prosecuting attorney. The prosecutor should be an able, conscientious, fearless individual, unbiased and free from influence, political or otherwise. The prosecutor should lend such aid to the police department as he can in seeing that the accused is properly booked, and in assisting the officer in getting all the evidence in proper shape for presentation to the court or jury. It occasionally occurs that the accused is not tried on the real offense committed, but on some lesser charge. The result of this is as follows: For instance, an individual is a pickpocket, he may either be charged by the police with being a pickpocket or a thief, and later the charge changed to disorderly conduct or some lesser offense. Presume that he is found guilty of this charge, and later he is picked up again. There is no former conviction of the accused as a pickpocket or a thief. In other words, his record in so far as being a pickpocket or a thief is virtually clear, and in cases of this kind it is very helpful, in order to secure a conviction, to show that the accused has been convicted at some previous time for being a pickpocket or thief.

HARRY B. MILLER

The next authorities are the courts and the juries. Defendants very often ask for delays or continuances without submitting bona fide reasons. It is discretionary with the court to grant such continuances. They should not be granted, however, unless the defendant shows absolutely good legal grounds. Delay in bringing the accused to trial has the effect of discouraging the police officers or prosecuting witnesses, thus giving the accused, because of useless delays, increased opportunity of escaping at the time he is brought to trial that punishment which is commensurate with his offense. The accused often asks for a change of venue. This may be a subterfuge or a trick to get away from some judge whom he fears, or for the purpose of seeking delay. The statute in Illinois is clear as to what grounds must be presented to the court by affidavit before a change of venue is granted. The courts could assist in a speedy trial of the defendant by seeing that the laws of governing changes of venue are properly complied with. A great many of those accused insist upon jury trials. Every man charged with an offense is entitled under the law to a trial by a jury; but in a great percentage of these cases the defendant or accused demands a jury because he is a notorious character and seeks the benefit of a trial by twelve men to whom he is unknown, or merely for the sake of delaying his trial; and when he is finally brought to trial he waives the jury. The courts could be more careful in handling this kind of cases. The courts, as well as the prosecuting attorneys and policemen, should be free, of course, from all influence of a political nature or otherwise.

Many of these vicious characters, because of their experience in courts, are well versed in the various technicalities of the law, and they invariably take advantage of such technicalities, such as a minor error in the complaint. The courts

have discretionary power, on motion of the prosecuting attorney, to permit an amendment of such complaint instanter, so that the accused cannot take advantage of such error by delaying or escaping trial, thus defeating the ends of justice.

Jurors hearing these cases often permit sympathy to lead them astray from their duties as jurors, although it is clear the accused is guilty of the offense charged.

Another thing that I think has much to do with juries discharging or acquitting defendants is the fact that it is the law in state cases that the accused must be proved guilty beyond a reasonable doubt, whereas in city cases the accused must be proved guilty only by a preponderance of the evidence. The prosecuting attorney should be careful that the jurors are not misinformed or mislead as to this principle of law.

One of the best breeding places for criminals is the vicious pool room and saloon. There should be no consideration given to such places, and the quicker they are put out of business the better it is for the community in general, as well as for the protection of reputable patrons. If a notorious or suspicious character has been found in a saloon or pool room, the owner of such place should be warned by the police of the character of such frequenter, and, if he is found lounging about such place on several occasions, then the license of that particular pool room or saloon should be revoked.

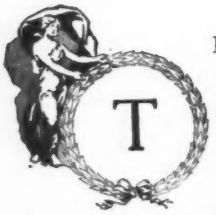
As the contribution of the city prosecutor's office toward the cleaning up of criminals and lawbreakers in the city of Chicago, I have given explicit and definite instructions by letter to each of the assistant city prosecuting attorneys to vigorously prosecute all violations of the city ordinances, and to give whatever assistance they can to the police department in the drafting of complaints and the arranging of the evidence for presentation to the court; also to the court by citing law relevant to the case at bar. I have made on two or three occasions an offer to the chief of police to meet with the commanding officers or warrant clerks, either by myself personally or a competent assistant, to give them advice on the way complaints should be drawn and the corpus delicti or gist of the offense should be charged. In this way we hope to bring about a more perfect law enforcement.

Harry B. Miller

Law Courts in China

BY WARREN R. AUSTIN

Of the St. Albans (Vermont) Bar



THERE are as many different kinds of law courts in China, administering different systems of substantive law, as there are nationals enjoying treaty relations with China; and then, there are the Chinese courts.

The purely Chinese administration of justice is at present in an unsettled condition, corresponding to the action and reaction of attempts at the establishment of a government, now called a Republic, in which the law, rather than persons, shall rule, and in whose protecting shadow all persons shall have equal liberties.

Only six years ago the Dragon Throne was occupied by an Emperor whose divine right to rule was not an empty Dei gratia superimposed on an election by kings and princes, but rather was a sanctity venerated and worshiped as that of a God. Placed in office by military usurpation or family selection as the fittest among the qualified princes of the blood, he became himself the Son of Heaven. He alone could worship at the altar of Heaven. His writ ran throughout the vast extent of the Flowery Kingdom, and his rescripts and edicts were the supreme law of the land. In addition to the imperial will so expressed, the jurisprudence of the Empire consisted of the maxims and epigrams of the great scholars and philosophers, such as Confucius and Mencius, and the customs of a precedent worshiping race running back to antiquity more remote than the earliest history of any other people. From this personal state,—for "l'état c'est moi" expresses the fact regarding this reverenced sovereign,—all elements of government descended to the people through a graded hierarchy of rank, in a confusion of mingled powers, finally reaching the subjects through the District Magistrate, or Hsien, who presided over one walled city with its surrounding countryside. This Magistrate exercised all judicial as well as administrative functions. Besides a myriad other duties he was Police Magistrate, the Court of First Instance in all civil and criminal cases, the Coroner, Prosecuting Attorney, Sheriff, and Jail Warden. If there is any part of the judicial function which has been omitted, he was that too. Lawyers had but little encouragement to practise before him, because, while a defendant might employ a lawyer, the lawyer could only draw up a plea, but could not conduct the defense. However, the magistrate employed a law clerk who was familiar with the Taching Lu Li, or Criminal Code, and who would turn for guidance to such published works as "Instructions to Judicial Officers," "Leading Cases in Criminal Law," and "Decisions of Famous Judges." The last, which is a sort of collection of judgments of Solomon, contains such precedents as the following:

Two men were disputing about the possession of a fowl. The judge inquired of each what he fed his fowls on. One said barley, the other said beans. When the fowl's crop was opened barley was found, so the bean man was punished.

Two men were quarreling about a piece of silk. The judge ordered the silk to be cut in two, and gave half to each man, and sent them out. Then he secretly sent a man to observe how they accepted his decision. One man looked pleased and the other looked discontented. This was enough for the judge, who ordered both pieces to be given to the discontented man.

In ordinary cases litigation is commenced before the magistrate by capias, on which the defendant is arrested. Frequently the plaintiff delays to prosecute his writ, hoping, by keeping the defend-

ant in custody, to force a satisfactory settlement. The "Instructions" provide that the magistrate shall fix a date for trial and have notice served on plaintiff that if he does not appear on the date fixed, with his witnesses, the case will be struck off the list. It happens occasionally that the defendant, being in custody in the Yamen, will bribe the Yamen runners not to serve the notice on the plaintiff, who will thus fail to appear and lose his case.

One piece of advice contained in the "Instructions," characteristic of the show-pidkin of the Chinese, is with respect to the demeanor of magistrates when dealing with offenses which they wish particularly to put down. It says: In order to strike terror into the hearts of evildoers, the magistrate must simulate uncontrollable anger. He should strike the table and shout aloud, and make believe his patience is quite at an end. He should stand up and make pretense of leaving the hall as if the heinousness of the crime were too much for him. The criminal must be made to feel that no penalty contained in the Criminal Code will meet the requirements of the case, and that something exceptionally severe must be invented for the occasion. Then, after the magistrate has worked himself up to the boiling point, he must with great effort bring himself to give the criminal one more chance, and resume his seat on the bench. Evildoers will then realize that they have no ordinary man to deal with, and will be terrorized into mending their ways.

There are certain cases where a petitioner may obtain summary relief. Outside the main entrance of the Magistrate's Yamen there is hung a gong, or there ought to be one, and when that gong is struck the magistrate is supposed to appear at once and take summary action. The gong may only be struck on the occurrence of certain events which are enumerated on a board over the gong, as follows:

1. That a secret society is plotting mischief.

2. That the police are making illegal arrests.

3. That the police are detaining someone secretly.

4. That the police are unlawfully removing goods.

5. That murder has been committed.

6. That a highway robbery has been committed.

7. To give in charge conspirators or violent beggars.

The compensation of this Imperial representative, who is the guardian of the morals and property of the Chinese, is largely dependent upon what he can obtain by way of honorarium, or squeeze, out of the business. And since he must not only provide for the maintenance of a numerous retinue of subordinates, but must also give gratifications to his superiors, not neglecting the secretaries and accountants of these great men, who are in a position to slip a good or evil word into their masters' ears, the cost of litigation is limited only to what the traffic will not bear. It follows, therefore, that bribery or "squeeze" has become an established institution more potent than process of law. Indeed the magistrate was but executing the policy of his imperial master when he extorted from litigants the last brass cash. Among all the twelve maxims promulgated by edict of the Emperor in 1112 A. D., to be observed by magistrates, the only one relating to his judicial functions was "to check unreasonable litigation." [1]

And Emperor Kang-li announced the policy in no uncertain terms:

"I desire, therefore, that those who have recourse to the tribunals should be treated without any pity and in such manner that they shall be disgusted with law, and tremble to appear before a magistrate. In this manner will the evil be cut up by the roots; the good citizens who may have difficulties among themselves will settle them like brothers, by referring to the arbitration of some old man, or the Mayor of the Commune. As for those who are troublesome, obstinate, and quarrelsome, let them be ruined by the law courts,—that is the justice that is due to them." [2]

Considered in the Oriental atmosphere

[1] The Chinese District Magistrate, by L. K. Tao, Vol. 1, No. 2.
The Chinese Social and Political Science Review, p. 53.

[2] Jermigan's China in Law and Commerce, p. 191.

and environment this policy is not so shocking as it seems to us.

The responsibility of every member of a family for the debts and crimes of any member thereof, the severity of punishment for any offense, the certainty of retribution or compensation falling upon someone, whether guilty or innocent, liable or not liable, and an innate gentleness and reliability of the Chinese race, have produced an unusually orderly living people. Moreover, as a result of this policy, civil cases are seldom brought before the magistrates, but are commonly settled by guild action.

An appeal lies from the decision of a Magistrate to the Fu, or Prefect, and up through the hierarchy to the Ministry of Justice, and, formerly, to the Emperor on petition for pardon; but usually litigants are too exhausted to go beyond the Magistrate's Court when he has finished with them.

In 1912 the victorious Republicans having upset the Dragon Throne, adopted a Constitution which provided, with reference to the judiciary:

"VI. Courts of Justice.

"Art. 48. The judiciary shall be composed of judges appointed by the Provisional President and the Minister of Justice.

"The organization of the courts and the qualifications of judges shall be determined by law.

"Art. 49. The judiciary shall try civil and criminal cases, but cases involving administrative affairs or arising from other particular causes shall be dealt with according to special laws.

"Art. 50. The trial of cases in the law courts shall be conducted publicly, but those affecting public safety and order may be held in camera.

"Art. 51. Judges shall be independent, and shall not be subject to the interference of higher officials.

"Art. 52. Judges during their continuance in office shall not have their emoluments decreased and shall not be transferred to other offices, nor shall they be removed from office except when they are convicted of crimes, or of offenses punishable according to law by removal from office.

"Regulations for the punishment of judges shall be determined by law."[3]

This reaction from absolute sovereignty, separating the judicial function from other departments of government, and tending to give it stability and independence, has survived, as a principle, the ebb and flow of various political waves which have submerged from time to time this original Constitution of government.

In important cities courts have been established, and a general plan for the whole country has been evolved.[4]

This includes a High Court of Appeals at Peking (Ta Li Yuan), an Appellate Court for each Province (Kao Teng Shen Pan Ting), Metropolitan Courts (Ti Fang Shen Pan Ting), and Courts of First Instance having the jurisdiction of a Hsien (Chu Chi Shen Pan Ting). Sporadic attempts have been made to put this system into practical use. New Civil, Criminal, and Commercial Codes have been compiled with foreign assistance, but they have not been passed into law by any of the Parliaments which have waxed and waned during the Republic. Until they are promulgated, any attempt to train an efficient judiciary with purely judicial powers will be abortive. In the meantime, in the country and, with but few exceptions, in the cities, where Municipal Courts have been established, the old system described above is administering the old laws of the Empire, adapted to the form of government temporarily prevailing by the personal judgment of the magistrate trying each case. It is not intended for the present to establish trial by jury, although one or two jury trials actually took place in China during the initial days of the Republic.

During the winter of 1917, Professor W. W. Willoughby, Adviser to the Chinese Government upon constitutional law, and I, had tried to obtain a view of the Chinese courts in action. After much postponement a party, consisting of Professor Willoughby, Professor Robert McNutt McElroy, then exchange professor to China from the United States, Mr. Richard Gailey, and myself, were admitted to the Palace of Justice in Peking. The building itself was modern, built upon western lines of architecture, and very large and grand, and occupied one of the largest compounds in the capital, located in the very heart of the city. Undoubtedly an enormous sum of money was invested in this imposing monument to equal justice. Within were spacious

[3] The China Year Book, 1914, p. 463.

[4] The China Year Book, 1916, p. 423.

halls and rostrums, with all modern equipment for bench and bar, but not a sound broke the hallowed silence except the soft, padding steps of the house coolie bringing tea and cakes to be served us. Our hosts, the Vice-Minister of Justice and the translator of the New Criminal Code had told us that the courts were not in vacation,—that they were too busy to take a vacation,—but they were not in session that day. We told them, over the teacups, that the building undoubtedly rivaled almost any courthouse in the United States, and that we were grateful for the hospitality of the Ministry of Justice; but that we were more interested to see how the courts operated, and observe the Chinese procedure, and that we would like to return on the morrow. Whereupon we were told that it was not certain that the courts would be in session. We then suggested that the Ministry let us return every day thereafter until we should find the courts sitting. His Excellency would not, under any circumstances, let us suffer so much inconvenience. He would send a conveyance for us when the courts would next be in session. We waited somewhat hopefully for a long time afterward, until a former Vice-Minister of Justice told me, in a moment of candor, that no courts like ours have yet been held in this superb Palace of Justice. Like some other features of this Oriental Republic, there is nothing but the empty shell of one of the most important departments of government. However, considering Chinese characteristics, there is no doubt that this shell will be of some influence to promote the substantial reform here attempted to be indicated to the Western World.

We did see a magistrate holding court. But the question whether the little Chinese woman who testified to the kidnapping of her daughter by the respondent was not "speaking a piece" was irresistible, when we considered the merriment all too plainly written in the countenances,—indeed, the whole attitude,—of both the complainant and the respondent as they appeared before the brocaded magistrate, his law clerk and the white amici curiæ who sat on the bench with him. A well-dressed Chinese gentleman entered the court room with the respondent and the complainant, and we were told that he was the respondent's counsel. But he took a back seat in the corner most remote from the bench, and maintained, throughout the examination, judgment, and sentence, a decorous silence. Tea and cakes and the generous, polite hospitality of the various dignitaries and officers of the Yamen sent us away with the sensation that, if they had fooled us, they had done it gently and pleasantly, and for sufficient purpose,—"to save their face."

Wherever Mixed Courts are available, the Chinese, owing to the relative uniformity of justice secured by foreign supervision, prefer to resort to the Mixed Courts.

These Mixed Courts in China were created by virtue of the Chefoo Convention of 1876 with Great Britain, regularized by the American Treaty of 1880. The court is, in each instance, a court of the defendant's nationality, giving its decision under the supervision of a competent representative of the plaintiff's nationality. No suit is brought by a foreign plaintiff against a Chinese defendant and left to the sole decision of the Chinese judge, without the presence of an assessor of the plaintiff's nationality, or one acceptable to him. The approval of the assessor is held necessary to the judgment of the court. He has the right to present, examine, and cross-examine witnesses. The law administered is the law of the nationality of the officer trying the case. This system is extended to every national having treaty relations with China.

The way Chinese litigants break into this court is by interjecting a foreigner into the plaintiff's claim.

The corruption, torture, and cruelty to which foreigners were exposed in the Magistrate's Yamens and prisons forced the Treaty Powers to claim extraterritorial rights over their own nationals. This was also but the natural result of the complete incompatibility of Oriental substantive law to Occidental civilization. In China, if a debtor's property would not pay his debts, the deficiency must be remedied by his father, brothers, or uncles; if a debtor absconded his imme-

diate family was imprisoned; if the debtor returned he was jailed until released by payment or death,—meantime, finding money for his daily food.

When, in 1895, Admiral Ting was forced to capitulate Weihaiwei and his fleet, he committed suicide. By thus technically dying before surrender, he saved his immediate family,—father, mother, sons, and daughters,—from decapitation, and their property from confiscation; the penalty when a commander surrenders an Imperial fortress. In 1839, when, in the course of a disturbance involving American and English sailors at Canton, a Chinese was killed, the authorities demanded that, if the guilty person could not be found and executed, the whole party should be handed over for execution. This was the law. Responsibility and retribution must be certain and speedy, regardless of intent or actual fault.

So extraterritoriality was secured after two wars; first, by the British in 1842, and second, by the joint struggle of the British and French in 1858. America and other Powers came in on the wave of British and French success, and secured treaties with China which constitute the charter of liberty of the foreigner resident in China. By it the foreigner resident in China is subject to no law of China, except that in the tenure of land the lex loci must apply.

Until 1907 the American Consul in China was the American's court to this extent: He was police magistrate to try offenses committed by American citizens, civil judge for suits brought against Americans by Chinese, other Americans, or by other foreign nationals, and criminal judge for felonies committed by Americans. He was coroner, probate judge, and register of deeds. Notice that the defendant was the party who gave jurisdiction. In some cases a curious result followed. As, for example, when a defendant's citizenship was in doubt; or a case of raiding a gambling joint where several prisoners were taken, each of whom was entitled to trial by his own Consul and punishment according to his own laws. One prisoner was fined $1, while another was fined $100 for the identical offense. Although an appeal formerly ran from the Consul, in certain cases, to the United States Minister at Peking, and, in other cases, to the United States Circuit Court of Appeals in California, yet in the first instance there was in no sense a retrial, and in the second instance the court of appeal was 6,000 miles away. So his judgments were practically final. Some of the Consul's difficulties are keenly appreciated, when we consider that he was called upon to administer "the laws of the United States." When Federal statutes were deficient, "the common law and the law of equity and admiralty . . ."[5] were, in like manner, extended over American citizens in China. Considering that each state has its own species of common law the Consular Court was in some bewilderment until the United States Circuit Court of Appeals for the Ninth Circuit, in the case of Biddle v. United States, 84 C. C. A. 415, 156 Fed. 762, held this law to be the common law in force in the several American colonies at the date of separation from the mother country. Moreover, in the case of a suit involving land tenure in which an American was defendant, he was required to apply Chinese law, which might have involved, and in fact did involve, interpretation of the tenets of the Buddhist religion. More often than otherwise the Consul was not skilled in the law. As a distinguished United States Congressman once remarked after a visit to China, speaking of a former Consul-General; "He didn't know much law, but he was h— on equity."

As foreign trade has developed in China, this difficult burden has been lifted in large measure from the overloaded shoulders of Consuls, by the establishment of national courts of justice in China.

On June 30, 1906, Congress created the United States Court for China, corresponding in grade to District Courts, and regarded as located in the Ninth Judicial Circuit, from which appeals run to the Circuit Court of Appeals held at San Francisco, and thence to the Supreme Court of the United States. This court does not displace the Consular Court,

[5] U. S. Rev. Stat. § 4086, Comp. Stat. 1916, § 7636.

which still have jurisdiction, in civil cases, to the amount in demand of not exceeding $500, and in criminal cases, to impose punishment not exceeding $100 fine or sixty days' imprisonment, or both, and to bind prisoners over to the United States Court.[6]

This court has jurisdiction of all other cases, including certain causes usually entertained only by state courts, such as probate, divorce, adoption, etc. It also has appellate jurisdiction of causes originating in the fourteen American Consular Courts throughout China. Any national may be plaintiff in this court provided the defendant is an American and process is served on the defendant in China.

The substantive law administered is the same as that enforced by the Consular Courts with the addition of "the law as established by the decisions of the courts of the United States." In both courts the law is subject to the terms of any treaty between the United States and China.[7]

Special sessions of this court are authorized at any place in China having an American Consulate, but the home seat is Shanghai, with one regular term each year held at Tientsin, Hankow, and Canton respectively.

This novel court, the sanctuary of American defendants, is more than an arbiter of particular controversies, more than an extension of the American system of jurisprudence beyond the limits of the United States, to the remotest lands from us; it is incidentally an international forum, which, by the justice and equity of its decisions, equally applied to foreign plaintiffs of whatever nationality, and by the exposition and enforcement of laws having their source and sanction in a government knowing no sovereign but the sovereign people, spreads abroad the liberty we ourselves enjoy, increases the confidence and respect of foreign nationals—especially the Chinese—in the institutions of a free government, and invites the young Chinese onward in their struggle to throw off the despotism of Old China which still lives, though the Government is called a Republic, and continues to express itself in part through the office of the District Magistrate.

Warren R. Austin.

[6] Act of June 30, 1906, 34 Stat. at L. 814, chap. 3934, § 2, Comp. Stat. 1916, § 7687.
[7] Ibid. § 4.

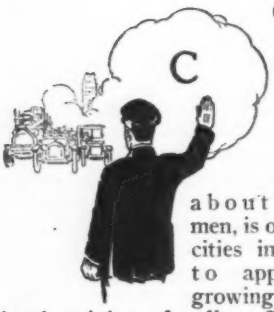
The Challenge of the Republic

From every section there sweep toward Atlantic ports the units of a mighty army. It is the rising tide of a great free people who would have all men free as they themselves are free. It is the challenge of the Republic for a free world, for a world democratic.

Emerson wrote, "God is tired of kings." The people are also weary of carrying dynasties upon their backs. Under the Divine impulse the nations of the free are arising in their might. No Alexander, no Cæsar, no Napoleon, shall again aspire to world dominion. It is the Armageddon between autocracy and liberty. Under the Kaiser only vassals fight. Against him the allies of justice, liberty, and humanity. There can be no compromise. Either God or Lucifer is to reign. Justice, not the sword, must be made the master of human destiny. In this contest America gives her treasure, she gives her sons that Belgium may be vindicated and that liberty may not perish from the earth.
—Hon. Alva Adams.

Police Department Short Course Institute

BY NED E. WILLIAMS



COUNCIL Bluffs, Iowa, a city of 35,000 population, with a small, but efficient, police force of about twenty-five men, is one of the first cities in the country to appreciate the growing need for the legal training of police officers. It has established a police department short course institute, consisting of a series of lectures upon law as it pertains to the work of the police officer. Sessions are held each Thursday evening, and every member of the department is required to attend.

Chief of Police Ovide Vien, Police Judge Frank Capell, City Attorney Henry Peterson, and Assistant County Attorney Edwin R. Jackson are the principal members of its faculty. Their services and time are donated for the mutual benefit of the department and the public.

The institute was modeled after one which was established in Des Moines upon a more pretentious scale. The idea was originally conceived and fostered by Eskil C. Carlson, one of the judges of the Des Moines municipal court.

The purpose of the course, as originally conceived, is not to develop students into lawyers, but to give to the peace officer sufficient of the general purpose of the law and of the elements of the law to generally apprise him of his duties, authority, and limitations of authority.

The following schedule of lecture subjects was outlined and adopted: "General Police Duties and the Relation of the Police to the Public; the Police and Accidents; Criminal Law—General Principles and Elements of State Cases; How to Secure Evidence; Health Regulations; General Ordinance Cases; Criminal Evidence—General Principles As Applied to Particular Crimes; Civil Service and Policeman's Pension; Service of Legal Instruments—Liability for False Arrest; Traffic Regulations; Ethics of a Policeman."

"This is not a school of instruction," Chief Vien told his men at the first session of the institute. "It is a conference for the discussion of police problems which present themselves and will continue to present themselves every day.

"These lecturers are not attempting to instruct you in your duties. They are here, because of their broader comprehension of the laws and of the needs and principles of the hour, to assist you in your discussions. The fact that some of you have seen twelve or fourteen years of service does not qualify you to efficiently discharge your duties for all time to come. New problems are developing in your line as well as elsewhere in the business world."

"The success of our prosecution frequently depends upon the testimony of police officers upon the witness stand, since members of the department are more regularly called than any other class as witnesses in the prosecution of criminal cases by the state," said Assistant County Attorney E. R. Jackson, who, in his discussions of criminal law and criminal evidence, attempted to coach the men for more efficient service in the handling of state cases and the submission of their testimony.

In his lecture upon accidents, City Attorney Henry Peterson stated that the duties of the policeman in relation to the prevention of accidents are as important as his responsibilities after one has actu-

ally occurred. Although the average policeman is generally well posted in the matter of city ordinances, it was found that the city attorney's talk upon this subject resulted in a more comprehensive understanding of their general purpose and intent. In his discussion of traffic regulations he urged strict enforcement of every traffic law, each of which has been purchased at the price of a life or a limb, he said.

Police Judge Frank Capell dealt with the problems which frequently present themselves in his court, in his discussions of how to secure evidence and the service of legal instruments. Dr. C. H. Bower, city health officer, lectured upon health regulations for the benefit of the policemen, who are expected to assist in their enforcement. "The Ethics of a Policeman" is a subject taken up by the commissioners of the fire and police board, with the assistance of all of the members of the police department.

"This short course institute is but the crude beginning of an elaborate system of professional training for police officers which will eventually become a reality," said W. R. Orchard, editor of the local paper, in a special talk before the institute. "Many of our leading colleges and universities are offering such courses at this time.

"In the future our policemen will receive not only legal training, but along lines of landscape gardening, athletics, and other branches which now seem strange and unfamiliar. The policeman of the future will be a highly trained and educated individual, receiving a salary of $150 or $200 per month. He will be required to devote a certain period each day to intensive training and educational development.

"His new work will be widely at variance with his present duties. He will have little or nothing to do with the apprehension of criminals. Criminal work will pass, because we'll quit rearing criminals. All of our children will be so educated that the species will become extinct. The new policeman will have supervision of a certain district of the city. He will be active, not in arresting law breakers, but in seeing that all parts of his district are properly beautified, necessitating a knowledge of landscape gardening.

"He will have charge of the public playgrounds of his district, not to keep the boys from fighting, but to lead them in their play. He will be an invaluable factor in the building of the character of the youth of the city because he will be possessed of the qualities with which the small boy customarily endows the blue uniform and brass buttons. He will have no time for the detection of crime. His time will be devoted to the prevention of crime by preventing youngsters from becoming criminals."

In the opinion of Chief Vien, the police commissioners, and others connected with the work of the department, the institute has been of material benefit. It has afforded inspiration for something more comprehensive in scope next fall. The men themselves, who at first exhibited considerable antipathy to the "school," have become enthusiastic over its prospects.

Ned Williams

Carnation Jim

BY WILLIAM D. TOTTEN

1

I never knew a man like him,
Carnation Jim;
A brilliant barrister and true,
And courteous, too.

2

The red carnation's fragrant flame
Illumes his name,
For on his breast he ever wore
This charming flower.

3

He was a genial, kindly soul,
Sans self-control
Whenever there was lurking near
The cup of cheer.

4

When wine was in he had no fears
Of passing years,
And burnt life's candle at both ends
With jovial friends.

5

A milder soul one seldom met
In peace; and yet,
To be a lion in a fight
Was his delight.

6

When wine was in he'd sadly brood
In solitude,
And, like a poet mad, rehearse
Life's woes in verse.

7

Did desperation rule his course,
Or black remorse?
Or did despair, with reason flown,
His mind dethrone?

8

Amid long hours of mental pain
He strove in vain
To conquer well the direst foe
A man can know.

9

Hail fellow met with everyone
Life's race he'd run,
Unmindful of unkindly fate
Until too late.

10

In weakness bred, in weakness born,
With hope forlorn,
The manly fight he made was lost
At fearful cost.

11

Neglected, near to death, he lay
From friends away;
I saw the light fade from his eye,
No loved one nigh.

12

With ruddy cheek and raven hair,
And visage fair,
Before the noon of manhood's day
He passed away.

13

The struggle that he well concealed,
Still unrevealed,
May, when he sees Jehovah's face,
Insure his grace.

14

I'm sad at his untimely end;
He was my friend.
May Heaven rest the soul of him,
Carnation Jim.

Some Curious Early Laws of New Jersey

BY RICHARD B. ECKMAN

of the Mount Holly (N. J.) Bar

Author of "New Jersey Township Law"

THE early statutes of our colonial and state legislatures are rarely examined nowadays, save by historians and lawyers who may have occasion to look up some chance reference or to trace the evolution of the statute law upon some particular subject. Indeed, it is difficult to secure access to them except in the state library or, perhaps, in a few of the largest public law libraries; and some of our oldest law practitioners, especially those whose forefathers were lawyers, may possess certain of the compilations of these early laws. Yet these laws contain much that is curious and interesting for any reader, and furnish enlightenment upon the social, economic, and religious conditions of the times that cannot well be found elsewhere, save from the files of contemporary newspapers.

One of the first impressions of the reader is the difference in the style of composition between the early statutes and those of our day. There is the gradual transition from the ornate, formal phrasing of the early acts to the cold, although not always concise, wording of the later statutes. Then, too, the former generally have elaborate preambles, couched in flowery and sometimes extravagant language; while preambles are infrequently encountered in more recent laws. Examples of such preambles prefixed to the early enactments might be multiplied.

Thus, what brewer or liquor dealer even in an exuberance of enthusiasm would now advertise that "forasmuch as brandy, rum and other strong liquors are in their kind (not abused, but taken in moderation) creatures of God, and useful and beneficial to mankind, and that those creatures which God bestows are not more to be denied to Indians than the Christians!" Yet this remarkable statement constituted the preamble to an act passed in the province of East Jersey, in 1682, which seemed designed to relax the former strict prohibitions upon supplying Indians with liquor, and to permit sales or gifts of such firewaters to the Indians if not made in quantities to intoxicate. And, to overcome the difficulty of proof, it was enacted that any person or persons, out of whose house any Indian or Indians should come drunk or intoxicated, should be deemed ipso facto guilty of breach of the law, and on conviction forfeit ten pounds and costs; but there was a singular proviso whereby the accused might purge himself of the offense charged by good evidence, or on his own corporal oath or solemn protestation before any justice of the peace.

Again, naturally we are shocked to learn that, in 1704, "Prophaneness and Immorality have too much abounded in this Province, to the Shame of Christianity, and the great Grief of all good and sober Men." Could this really ever have been true in our state? Yet such was affirmed in the preamble to a blue law of that year. Its second section solemnly ordains, "that no publick House-keeper within this Province shall suffer any Person or Persons to tipple and drink in his House on the Lord's

Day, especially in the Time of divine Worship (excepting for necessary Refreshment)."

In 1693, an act of the assembly marks the beginning of public education in New Jersey. It is admitted in the preamble with refreshing candor that the "cultivating of learning and good manners tends greatly to the good and benefit of mankind, which hath hitherto been much neglected within this province." However, to remedy this serious condition, it seemingly was made optional with the inhabitants of any town, by warrant from a justice of the peace of the county in which the town was situate, when they thought fit or convenient, to meet and choose three men of said town to make a rate for the salary and maintaining of a schoolmaster for so long as they thought fit. But two years later a mandatory act directed that three men be chosen yearly in each town to appoint and agree with a schoolmaster, and to provide for schools in the most convenient places for the benefit of all the inhabitants, as nearly as possible. These men constituted the school boards of that day, and were the predecessors of the present local boards of education, the members of which, according to the incongruous requirement of our revised School Law, need only possess the qualifications of residence and ability to read and write.

While on the subject of learning, the legislature of 1783 passed the first copyright law found among the statutes of this state. Note the lofty sentiments and ideals of justice expressed in its preamble: "Whereas Learning tends to the Embellishment of Human Nature, the Honor of the Nation, and the general Good of Mankind; and as it is perfectly agreeable to the Principles of Equity that Men of Learning who devote their Time and Talents to the preparing Treatises for Publication should have the Profits that may arise from the Sale of their Works secured to them." Doubtless authors and publishers found as much delight in this preamble as they did profit in the protection afforded by the act.

The severity of the penalties prescribed for the violation of the colonial laws is impressive. Many offenses were made capital which are not so now. And cropping, and the use of such instruments of torture as branding irons, public whipping posts, stocks, and pillories, were then common. For instance, the penalties for burglary in 1668 were, for the first offense, burning in the hand with the letter T and the making of full satisfaction for any damages or stolen goods; for the second offense, besides restitution, branding in the forehead with the letter R; and, for the third offense, death. In this connection, one of the remarkable laws inflicting capital punishment in that year was that providing that "if any child or children above the age of sixteen years, and of sufficient understanding, shall smite or curse their natural father or mother, except provoked thereunto, and forced for their safe preservation from death or maiming, upon the complaint or proof of said father or mother, or either of them (and not otherwise), they shall be put to death."

Yet, amid all the severity of the early laws, the legislative bodies were sometimes inclined to mercy, as is indicated by the passage in 1704 of the only amnesty act discovered among the early statutes. This extended general pardons for all crimes committed prior to the then preceding 13th of August and not already prosecuted, and absolved from liability in all civil suits or actions for divers offenses, for the reason, as the preamble informs us, that "the Assembly seriously considering that Nothing can tend more to the Honor of our most Gracious Sovereign Lady the Queen, and the Good and Quiet of the Country, than Unity, Love and Concord amongst all Her Majesty's Subjects; For the attaining of which great and good Ends, and for the preventing of all future Fears and Jealousies, and quieting the Minds of all Her Majesty's loving Subjects within this Province."

Legislative attention was occasionally directed to matters of religion, as is evidenced by the introduction during the session of 1721 of a bill of most singular title. It was, "An Act against Denying the Divinity of our Saviour Jesus Christ, the Doctrine of the Blessed Trinity, the Truth of His Holy Scriptures, and

Spreading Atheistical Books." This bill was rejected on its second reading, and hence did not become a law. Colonial assemblies rarely were concerned with these subjects.

In the year 1686, dueling and sudden quarrels resulting from the practice of carrying arms seem to have been grievous evils in East Jersey, if a law of that year was justified. According to the act, several persons had received abuses and were in great fear from quarrels and challenges. To prevent it in the future, no one was permitted, by word or message, to make a challenge, upon pain of six months' imprisonment and a fine of ten pounds. Whoever accepted or concealed the challenge was also to forfeit ten pounds. No person was to wear any pocket pistols, skeins, stilladers, daggers, or dirks, or other unusual weapons, under penalty of fines and imprisonment. No planter was to go armed with sword, pistol, or dagger, upon penalty of five pounds. Officers, civil and military, soldiers in service, and strangers traveling upon lawful occasions, were excepted.

Privateers and privates infested the coast of East Jersey and committed many depredations upon the inhabitants and shipping, moving the assembly, in 1686, to pass an act for restraining and punishing these bold marauders, by imposing most severe penalties.

Judging from an act of 1675, false news was being published whereby the minds of the people were frequently disquieted or exasperated in relation to public affairs. So fines, the stocks, and the whipping post were invoked to check this evil. Perchance some such agency not infrequently disquiets or exasperates the minds of people about public affairs in more recent times.

Early enactments serve to throw interesting light upon the practice of medicine during the colonial period. In an act of the year 1772, after reciting that "many ignorant and unskilful persons do take upon themselves to administer physic and practise surgery in the colony of New Jersey, to the endangering of the lives and limbs of their patients, and many of His Majesty's subjects have been great sufferers thereby," a plan of examination and license is prescribed. The license to practise is termed a testimonial. The personnel of the examiners leads one to marvel at the attainments then expected of judicial officers. For the examination was held before two judges of the supreme court, who might have the assistance of such persons as they thought fit. Mountebanks seemingly abounded, and were subjected to heavy fines. Another curious provision in this act required the account or bill of a physician or surgeon to be "in plain English words." In our day, whatever may be said of prescriptions, who can gainsay that their bills are models of unmistakable English?

Simple and primitive were the methods of public finance in colonial days. In what bulky form, for example, the governor received his salary—in money value it was at the rate of two shillings per head for every male from fourteen years old and upward residing in the colony—when payment was made in such commodities as wheat, rye, corn, peas, and tobacco, as in 1676 and succeeding years! How extraordinary it would now seem to authorize lotteries to raise money for educational and religious institutions! Yet private acts for such purposes were not then uncommon. Thus, in 1762, the church wardens and vestrymen of St. Mary's church of Burlington were empowered to raise money for repairing the church, parsonage, and burying ground, and in the same year the trustees of the College of New Jersey (now Princeton University) were likewise to secure funds for the use of the college. Nor would the state now resort to a lottery in order to purchase lands, as was done by the colony under an act of 1758 ordering three public lotteries to raise the aggregate of 1,600 pounds to purchase the claims of the Indians to all lands in the colony. This act recited that the Delaware Indians inhabiting south of the Raritan river desired part of the sum to which they were entitled to be laid out in land on which they might settle, and, pursuant to the authority therein conferred, the commissioners appointed by the act, with the approval of the governor, purchased a large tract of land, containing 3,044 acres, in Evesham township, Burlington county, called

Edge Pillock, on which the Indian town, called Brotherton, was located.

Paper currency in New Jersey originated with the act passed by the assembly in 1709 for raising 3,000 pounds by the issuance of bills of credit. This was the first law for the emission of paper money in the colony. Other money in circulation consisted of foreign gold and silver coins. For the purpose of increasing the circulating medium in the province, the assembly authorized a further issue of bills of credit to the amount of 40,000 pounds by an act of 1723 which recited that "the gold and silver formerly current in this province is almost entirely exported to Great Britain and elsewhere, and thereby many hardships which His Majesty's good subjects within this colony lie under for want of a currency of money, and that both the neighboring provinces of New York and Pennsylvania, to which the exportation of this province is chiefly carried, have their currency of money in paper bills, and do pay for the produce of this province in no other specie, and which bills of credit of the neighboring provinces being no legal tender here does expose the inhabitants to numerous vexatious suits for want of bills of credit in this province, by law made and declared a legal tender, as is done in the neighboring provinces." It further sets forth, in order to pay the small taxes for the support of the government, that the inhabitants have been obliged to cut down and pay in their plate, earrings, and other jewels. With the larger emissions of bills of credit, this latter act created loan offices in each county and appointed commissioners in charge. The bills were distributed in fixed proportions among the several loan offices, and the commissioners loaned them to applicants, taking in exchange mortgages on lands of double and houses of treble in value, with interest at 5 per cent. A sinking fund was provided for redeeming the bills. Hence, they were as firmly secured as the colony itself. They were a legal tender to all the inhabitants, but not to others except while in the colony.

For sinking the bills of credit and for the support of the colonial government, a curious scheme of direct and specific state taxation was adopted. Taxes within maximum and minimum rates at the discretion of the assessors were levied upon householders, merchants, and shopkeepers, sawmills, gristmills, fulling mills, furnaces, forges, glass houses, stills, brewhouses, ferries, vessels carrying cargoes and passengers for hire, bought servants and slaves, being males of sixteen years old and upward, except such slaves as were unable to work, vehicles, cattle and horses, lands variously valued in different counties, peddlers and traveling traders, and, finally, per capita taxes on single men, with an odd distinction between a single man who worked for hire if he kept a horse, mare, or gelding, and one who worked but kept no such animal. Here we have the oft proposed tax on bachelors in full force long ago in the colony of New Jersey! Then, to encourage the boys to remain at home on the farms, it was enacted, in 1769, that single men who live at home with their parents, and work for them, and do not otherwise work for hire except in harvest time, shall not be rated as single men. Thus is shown for agriculture a solicitude like that which the assembly manifested for an industrial enterprise in which New Jersey was later destined to lead among the states of the Union, when, in 1765, an act was passed for granting a bounty upon the planting of mulberry trees in the colony for the raising of raw silk.

Slavery existed in the colony and during the early years of the statehood of New Jersey. Numerous statutes to regulate slavery are found in the books, culminating in the act of 1804 for its gradual abolition and the emancipation of the slaves. Gradually, however, even before this final abolition act, the restrictions upon their ownership and the importation and trading in slaves were made more and more rigid. Among the earliest provisions is one for compensating owners for slaves who were executed for capital crimes, in order to prevent the owners from transporting such slaves out of the province to escape the death penalty; and another which, reciting that it is "found by experience that free negroes are an idle, slothful people, and prove very often a charge to

the place where they are," enacts that the manumitting owner, or his executor when the manumission is by his last will, should give bond to the crown with two sureties in the penal sum of 200 pounds conditioned for paying twenty pounds yearly to such slave during his life.

The right of suffrage, and eligibility to hold office and serve upon juries, were not extended to all the inhabitants of the colony. No one was eligible to membership in the general assembly who did not own 1,000 acres of land in his own right, within the division for which he was chosen, or personal estate to the value of 500 pounds. No one was allowed to vote unless he had 100 acres of land within the division in which he should vote, or personal estate to the value of fifty pounds. All jurors were required to be freeholders in the county in which they were summoned. Grand jurors had to be worth one hundred pounds in real estate in the county, and petit jurors to be worth one hundred pounds in real and personal estate. Then, too, subsequent to the surrender in 1702, the colony was involved in much confusion on account of members of the Society of Friends being denied to serve on juries, under pretense that an oath was absolutely necessary. In many parts the inhabitants were chiefly of that persuasion and juries could not be got without them. This condition was finally relieved by the passage in 1713 of an act entitled "An Act that the Solemn Affirmation and Declaration of the People Called Quakers Shall Be Accepted Instead of an Oath in the Usual Form, and for Qualifying the Said People to Serve as Jurors, and to Execute Any Office or Place of Trust or Profit Within This Province."

Stirring times prevailed in our state during the colonial period and the ensuing years of the Revolution. The paramount issue then, as to-day, was preparedness. The several wars waged between England and France and Spain were extended to their respective colonies in America, and necessitated the raising of troops in this colony to participate in a number of military expeditions to Canada and the West Indies. Repeated attacks by hostile Indians also contributed to the dangers which threatened the colony. Indeed, from reading the statutes of these times, the grim specter of war seemed seldom nor long banished. Measures looking to preparedness were various, chief among which were those of universal compulsory military training and the furnishing of arms and ammunition by the inhabitants and towns, under laws enacted as early as 1668 and the years closely succeeding. So all male inhabitants in the colony between the ages of sixteen and sixty years, except magistrates, ministers, deputies, and constables, and, later, certain others, were, on warning from the captain of each company, to train and be mustered in each town at least four days in the year, and oftener if the chief military officer in the place should see it needful. Two of these training days occurred in the spring and two in the fall, at which times the men of military age had to appear in complete arms. Such inhabitants had also to supply themselves, at their own expense, with "a good serviceable gun, one pound of gunpowder, four pounds of pistol bullets or twenty-four bullets suited to the gun, six flints, a worm and priming wire fit for such gun, bandoleers, cartridge box or powderhorn, and a sword and belt." What a veritable arsenal! To insure compliance, in addition to the militia fines imposed it was the duty, at first of the chief military officer in every town by himself or by the company clerk, at least twice a year, and, under a later act, of the sergeant with the corporal, quarterly or oftener, to take an exact view of such supplies of arms and ammunition. Also each town must provide a public stock of ammunition, consisting of a half barrel of gunpowder and 160 pounds of lead. Then, for the repairing of arms, officers physically capacitated as well as all wheelwrights and carpenters had to be ready for such work, or be committed to jail for any refusal. For better security from the Indians, it was enacted at the session of 1675 that one or more fortifications should be made in every town, at its own cost, containing therein a house for securing the women and children, and provisions and ammunition. The inhabitants when ordered

by the military authorities had to present themselves with necessary tools for work in the erection of such strongholds. And no person under any pretense might sell, give, or supply any Indian with guns or ammunition, nor any blacksmith, locksmith, or other person make or repair any Indian guns, under heavy penalties. Also numerous acts were passed from time to time for establishing a militia. These military laws imposed great hardships on those conscientiously scrupulous of bearing arms, and bills were introduced to relieve the Quakers from militia fines, but these failed of passage.

In 1758, an act appointed managers and empowered them to erect barracks sufficient to contain 300 men at each of five places,—Burlington, Trenton, Perth Amboy, New Brunswick and Elizabeth,—for which barracks not more than an acre of land should be acquired, and not exceeding 1,400 pounds could be expended for the use of the barracks at any one place. How puny seems all this when compared with the vast cantonments and collossal expenditures of our present great war!

Also, in 1758, the assembly sanctioned the use of dumb animals in warlike service by authorizing the purchase of "fifty good large strong and fierce dogs to assist the troops in pursuing and attacking the Indians in their secret retreats among the swamps, rocks, and mountains, as the Indian enemy are a very private and secret enemy."

Deeds of valor received substantial recognition in the same year (1758), and the reward is especially noteworthy because it is the only instance of its kind appearing in our early laws, passed as they were in times which abounded in acts of conspicuous bravery. After reciting that one Sergeant John Vantile with a party of nine under his command had fought the enemy on the frontiers of the colony in a signal manner, and that a lad named Titfort who was seventeen years of age when pursued by the enemy had shot one of them and secured his retreat, losing his gun, the act directed the paymaster to pay John Vantile twenty Spanish dollars and to each of the party under his command ten dollars and to the lad named Titfort thirty dollars, and also to present Vantile and Titfort each with a silver medal of the size of a dollar, whereon should be inscribed the bust or figure of an Indian prostrate at the feet of Vantile and Titfort, importing their victory over them, and to commemorate their bravery and their country's gratitude upon the occasion. Further, it was provided: "Which medals said Vantile and Titfort shall or may wear in view, at all such public occasions which they happen to attend, to excite an emulation, and kindle a martial fire in the breast of the spectators, so truly essential in this time of general war."

Other early measures remind of the social and economic problems confronting us to-day, such as the prohibition upon the sale of intoxicating liquors to any common soldier or noncommissioned officer, without leave of their commissioned officer, or any justice of the peace of the colony. Again, in 1777, an act was passed to prevent the distilling of wheat, rye, and other grain in order to prevent the army and inhabitants from being distressed for want of grain, for which great prices were at the time given for the purpose of distillation. Three months later this act was suspended in operation until similar laws should be enacted in New York, Pennsylvania, and Delaware, which, we are told, was not done, and this act has never since taken effect. Also acts to regulate and limit the price of labor and sundry articles of produce, manufacture, and trade, to prescribe the weight of loaves of bread, and to prevent food speculation and hoarding, etc., were passed by the colonial and state legislatures.

Exemptions from military duty were granted during the Revolution to workmen in ironworks, printing offices, powdermills and paper mills, and to schoolmasters and teachers and others. As to paper mills, although over forty existed in the state at that time, there appeared to be a scarcity of paper. In the interesting preface to an important compilation of the colonial laws,—that by Samuel Allinson,—the compiler states that "the printer had been unable to secure sufficient paper to have proceeded without loss of time, and that the want of that material stopped the press several

weeks at sundry times until more could be manufactured."

This brief review of a few of our rather numerous colonial and early state laws serves to show what marked changes have, in the intervening century or two, been effected in our public and private life. Yet we note the similarity of many of the then problems,—economic, social, and political,—to those which confront our people and legislatures now. Doubtless to the wisdom, foresight, and devotion exercised by our forefathers in dealing with the affairs of their time is largely due the present greatness of our state and nation.

Richard P. Ekman

Evolution in Government

Six thousand years of written and unwritten history lie behind the beginning of ours. During this making of the world's history the earth was literally strewn with every conceivable form of government from the family, groups of families, clans, and monarchies on down to the worst form of political and military despotism that ever disgraced universal history. But governments, like people who make and unmake them, are subject to the never-failing and unvarying law of evolution, and, true to this principle, governments have moved onward and upward, and every new government born during the centuries of the past has been better than the old. Each succeeding government has given man more political and religious freedom than the old. Little by little, step by step, man has fought his way up from a cave dweller to his present intellectual position, and in this upward struggle to better his condition socially, morally, and politically, step by step he has gradually taken power which formerly belonged to kings and emperors and placed it upon his own shoulders, to be administered by himself in the making of governments, and in the making and unmaking of laws to govern himself and future posterity. And my fondest hope is that in the future, as in the past, men and governments designed to govern them will continue to grow, expand, and unfold until they reach a pure democracy.—Hon. William E. Cox.

Intellectual Leadership in War Time

BY WILLIAM MORRIS HOUGHTON

THAT distinguished member of the New York bar, Mr. James M. Beck, was not referring specifically to the third Liberty Loan when on a recent occasion he made the remarks quoted below, but he might well have been: "Time, human endurance, will not permit this war to go on endlessly. It will end in a compromise unless America shall sense the supreme peril of the hour and throw all of its supreme energies into the mighty task. It can do that: it will do it if it sees the peril. We are never lacking in courage, we are never lacking in idealism, but we do not see the vital nature of the present hour, and it ought to be seen."

The members of Mr. Beck's profession are the best qualified of our countrymen in training and intellectual capacity to help us see the light, and Mr. Beck has set them an illustrious example in the performance of the great duty which lies before them. With the advent of the third loan campaign this becomes a twofold duty,—of supporting the loan with all the eloquence at their command, and of making their money talk as well.

Our intellectual unpreparedness in America is part of the price we must pay for democracy. In the country of our enemy they order things differently. It is one of the advantages which autocracy enjoys in the matter of war preparation, but one which, with the help of the lawyers of the country, we can and must overcome.

The intellectual leadership of Germany is intrusted, apparently, to a coterie of blood and iron professors of whom the late historian, von Treitschke, will serve as a conspicuous example. These men more than any others seem responsible for the articulation of the German philosophy of might. A perusal of that illuminating volume, "Conquest and Kultur," edited by two of our own professors for the purpose of presenting in compact form, and out of the mouths of her spokesmen, the whole hideous insanity of the German point of view, is lavish with its quotations from these university savants, who preach to immature minds the twin doctrines of cruelty and deceit, clothed in biological metaphors.

Americans have stood aghast at this revelation of the intellectual autocracy which has bludgeoned the German mind into complete, even eager, submission, and for two reasons. The first of them has to do with the content of the extraordinary precepts current among these pedagogues. Imagine this, for example:

"Germany's mission in history is to rejuvenate the exhausted members of Europe by a diffusion of German blood."

This is a quotation from "The School and the Fatherland," a manual for school children. It is cited here, not for any extremity of thought or expression it may contain (the book is brimful of equally or more startling sentiments), but simply because of the public to which it is addressed—the plastic little people of the schoolrooms whose "sweetness and light," under our system, would be our chief concern.

It would be a work of supererogation to multiply such quotations in this article, and especially since Americans must have become familiar by this time with the general purport of the academic teachings which have poisoned the Teutonic mind. The racial conceit and ferocity which they display, their pedagogical lack of humor, and their utter intolerance, are all indelibly impressed upon our consciousness, national and indi-

vidual. And yet we gasp, for such things used to be incredible.

Our second reason for astonishment is concerned with the source, not the type, of this intellectual leadership. We are not accustomed in this country to such a reverence of academic opinion as obtains in Germany, however keenly we respect those unselfish men who make up our college faculties. We even deprecate any wide and insistent expression of such opinion, as many incidents of a semisensational nature in the last few years will amply demonstrate. President Nicholas Murray Butler, of Columbia, has gone on record as sharing this public attitude. The controversy on the subject is still a fresh one. It is unnecessary here either to analyze its causes or to take sides. The fact is apparent enough, and equally apparent is the contrast which it offers to the situation among our enemies. (In a note attached to one of Treitschke's utterances the editors of "Conquest and Kultur" say of him: "His works became cyclopedias of patriotism. Their aphorisms have become a part of German political scripture, their philosophy has been the textbook of German statesmen. Bernhardi quotes Treitschke with the same reverence with which he quotes Bismarck and Machiavelli.")

In this country it is not to our professors, but to our lawyers, if to any one class at all, that we accord intellectual leadership. The reasons are close at hand. The emoluments and distinctions which have been the prizes of the profession in the United States have attracted to it the cream of American manhood. These men have taken by far the most active part in our public life, have early accustomed themselves to public appearance and expression, and in the ordinary course of their professional duties have been compelled to develop their dialectical, forensic, and literary talents to a degree beyond the attainment of the less experienced. But, above all, they are recognized as bridging the gap between the realm of pure intellect and the busy, practical world of every day. They are the prophets of pragmatism, and as such, perhaps, more than for any other reason their word commands a respect which is not vouchsafed the outpourings from academic shades, and which, in fact, is a very high compliment to any class or profession in a democracy as irreverent as our own.

In the ordinary course of peace-time controversy it has been the habit of our lawyers to range themselves on both sides of a political question, whether local, national, or international. This is of the very essence of democracy, and has been one of the most potent influences in the maintenance of our intellectual balance as a nation. In strict contrast, as we all know, the professors of Germany, thanks to their autocratic environment, have fulminated preponderantly always on one side, the side of the Emperor and the Junkers. And they have destroyed the intellectual balance of the German people, reducing it to the degree of madness of which we are all witnesses.

But their method of thought leadership, in common with other autocratic methods, admits of no doubts or mental reservations, tolerates no division of opinion, destroys the habit of opposition, and does all this long before the onset of hostilities and before the need for complete national unity becomes acute. With us our will to victory, like our Army and various other belligerent agencies, must be improvised after the declaration of war. This lays a sudden and tremendous burden on those men to whom the people have looked for guidance. They must immediately get together themselves, and then by constant, unremitting exhortation, precept, and example, not only unify the country's sentiment for the tremendous task before the nation but help translate this sentiment into the specific forms of organized effort which bring victory.

This, then, is the role which our lawyers, to the extent to which they are our intellectual leaders, must play and continue to play in this country. In such men as Mr. Beck, as Charles Evans Hughes, and the late Joseph H. Choate, they have superb exemplars of the lofty spirit of patriotism, and the splendid intellectual and moral leadership to which many of them may attain and all should aspire. The campaign for the third Liberty Loan supplies an immediate and very practical

object to which they may call the attention of their countrymen. The appeal to the patriotic investor cannot be made too pointed or emphatic. Too much or too great eloquence cannot be expended, or an atom of the ability of the greatest advocate in the land wasted, in the work of nerving the population of this blessed land to the supreme effort of absorbing this mighty bond issue, to the end that every ounce of our material resources available may be brought to bear in crushing this monstrous thing with which we are at war.

To quote Mr. Beck again:

"It is the duty of every man here—we cannot go to the firing line, we cannot take up a rifle, we cannot perhaps do the deadly work of the armed field, but every man here, if he is worthy of America, if he is worthy of civilization, if he is worthy of being a man, can throw his own soul into his immediate surroundings, into making more vigorous the spirit with which we will surely conquer."

William Morris Hoyston

"Here, Too"

My husband is a lawyer,
And one of the very best.
His practice is of such magnitude,
He scarcely takes a rest.

With clients, briefs, and jury trials
His time is occupied;
His family scarcely know him now;
He couldn't stop if he tried.

He's a patriotic fellow, too,
He tries to do his bit;
And every time he makes a speech
He always makes a hit.

He's the owner of a Liberty Bond,
He donates to the Y. M. C. A.;
He has not started knitting yet,
But is liable to any day.

But something now is worrying him,
And it's working on him strong;
He's very restless every night;
Yes, there is something wrong.

And in his sleep he raises up,
And talks of armies, war, and strife;
He frightens us almost to death,
His children and his wife.

Don't judge him harshly, friends,
Though he is acting queer,
He's been helping registrants
Make out their questionnaire.

Bassett, Neb. F. N. Morgan.

The Files in a Law Office

BY SHIRLEY MADISON

ACCORDING to the best authorities, system in a law office is of comparatively recent origin. Sometimes yet a very great advocate jealously guards a desk which looks like a map of Treasure Island, and nobody but his little secretary knows just how many golden hours somebody has to spend digging for something or other which the great man needs. Other attorneys use so much red tape that you get all tangled up in the net when you open the door, and are glad to make your escape without finding what you went after.

We claim nothing for "our way" except that we are able to go straight to what we want when we want it. There are four of us in the firm, and for simplicity all work is firm business. Of course each man may have a client about which the others know but little, or all of us may be concerned in a litigation. The connecting link is our files. The bookkeeping is a separate item not gone into under this heading.

Retained in a case we "make a file" and give it a number. We use the big, flat nearleather envelops, pasting the label in the upper right-hand corner. These envelops have varying capacity for expansion, chosen according to the probable length of the history to go inside. This same number has a page (or pages) in the loose leaf docket, which is indexed to both plaintiff and defendant under captions "direct" and "reverse." It also means two cards, plaintiff and defendant, for the filing case. We do not carry out the card system, as the complete record is entered in the docket after the manner of court records. The cards are merely for use at the filing case itself. Usually it is much quicker to turn to the docket index.

In building the file, the long and short papers divide themselves naturally into the pleadings and letters. These are attached to separate manila backs with flat-file fasteners. It makes a symmetrical arrangement, and better, saves hunting for yours of the first between a petition and an affidavit. Our theory is that everything belonging to a case should be kept with it,—bills for brief printing, notices of publication, stray telephone numbers, receipts for paid court costs, these go among the letters by date. If the litigation goes up, a copy of all briefs and opinions are part of the papers. This for the reason that, aside from easily finding the law you used in one suit under the doctrine of the "last clear chance," you have it segregated when the next *Andrews v. Tramway Company* happens along. For the library, the briefs are bound in practically uniform volumes.

Like every other firm we have clients whose work requires a good deal of consultation and correspondence with a minimum of controversy. A file like that is simply labeled, "In Re Wiggins Estate," "In Re Buenos Aires Lumber Company."

We have a general file for a few matters which belong to nobody but themselves, but it is kept as empty as possible.

Firm bills are lodged by the year in an ordinary inventory file box. Each man's private bills in the same kind of a box.

The iron ore company whom we represent has a filing case of its own, the envelops alphabetical, not numbered. Occasional litigation for them is run in the regular docket.

Our railroad company also has its own file, and besides its own docket, because our client is so almost unanimously the defendant that the double index is not necessary.

The carbon copies of the reports on abstracts which we examine for several investment companies go in a drawer

labeled to the company and indexed to the borrower. If you do this, you understand what it means when someone inquires what you said four years ago about a given quarter section in a far away county.

Files containing original documents have a place in the vault, with a notation to this effect in the docket. Keeping the entire file there obviates the confusion that would arise from divorcing the data.

When a will is drawn, a copy is also sent to the vault with names of witnesses, to facilitate proof for the future.

A word about our disposed of files. The litigation ended, we transfer the envelop to our "settled files," put the docket pages in the "settled docket," and likewise the cards. Our live cases are thus easy of access. If it is necessary to revive litigation it can be done with small ceremony by restoring everything to its original location.

Recommendations for the loose leaf docket are two,—entries can be made on the typewriter; you are not embarrassed by bumping up against the next number with no more paper to write on. For illustration, we take a page with no complications.

Court File No. 94—314 Office File No. 2217

Court—Chancery. (Chancellor Dartle)

MURDSTONE & CHUZZLEWIT
Plaintiff

v. Steerforth & Copperfield
Attorneys for Plaintiff

DICK SWIVLER, MARCHINESS SWIVLER, SAMUEL WELLER, LONDON STATE BANK & JOHN DOE,
Defendants. Jaggers (Swivlers)
Brass (Weller)
Attorneys for Defendants.

RECORD

NATURE OF CASE. Foreclosure. Lots 5 & 6 original town Bradenburg

1916

Jan. 7: Retained.
Jan. 9: Petition filed setting out original loan to Dick Swivler; Transfer by him to wife; by her to Samuel Weller, now record owner. London State Bank judgment creditor Weller. John Doe tenant.
Jan. 9: Notice Lis Pendens.
Feb. 1: Sheriff's return. Personal service Dick & Marchioness Swivler; also John Doe (real name Oliver Twist).
Residence service Weller; London State Bk. on Pickwick, cashier.
Mar. 7: Demurrer to petition (Jaggers)
Motion to require plaintiff to elect. (Jaggers).
Mar. 14: Demurrer to petition overruled. Motion to require plaintiff to elect overruled. Petition construed to declare foreclosure Swivler mortgage and upon Weller as an assumption to pay debt.
Apr. 12: Hearing.
Apr. 20: Judgment for plaintiff $3,560 & foreclosure. Decree. Exhs.
May 19: Præcipe order sale.
Sale set April 21.
Apr. 21: Sold to plaintiff for $3,600.
Apr. 22: Report of sale.
May 2: Sale confirmed. Deed ordered.
May 7: Sheriff's deed, abstract & papers to plaintiff.
May 10: Receipt papers acknowledged.

SETTLED

By thus eliminating everything except essentials, our stenographer discovers time to handle the filing and the dockets. If everything can be made ship shape each day, well and good. If not, she has on her desk an envelop marked, "For filing," and in this are lodged all papers looking for a home. Some half hour when we are too busy for dictation they are put away. Another morning when we have a battle on outside, she checks the dockets and makes the transfers.

Woe be to the man who makes a motion to hire a clerk, though nobody could be farther removed from relationship with Xantippe. To serve us all and not wander half blind among the catacombs reared through so many years by our profession, she must be trusted to take care of what she claims as her part. Perhaps she is right. To get acquainted with *res judicata* we spent a pile of father's money and have a diploma for our office wall. She has to make friends with phrases as chance throws them her way. A bigger, better reason is because to her the filing case is a theater for all comedy and all tragedy, and Law is but Life.

Story of the American's Creed

The idea of laying emphasis on the duties and obligations of citizenship in a national creed originated with Henry S. Chapin and was first announced by him in Educational Foundations in September, 1916. The contest was to have closed in December, 1916, but patriotic societies, among which the Vigilants figured prominently, asked that the closing be postponed until nation-wide publicity be given the announcement.

In March, 1917, the city of Baltimore, as the birthplace of the "Star Spangled Banner," offered, through Mayor James H. Preston, a prize of $1,000. Committees were then appointed to pass upon the creeds submitted. These committees were: (1) A committee on manuscripts, consisting of Porter Emerson Browne, Henry S. Chapin, Hermann Hagedorn, and representatives from leading American magazines; (2) a committee on award, consisting of Matthew Page Andrews, Irvin S. Cobb, Hamlin Garland, Ellen Glasgow, Julian Street, Booth Tarkington, and Charles Hanson Towne; (3) an advisory committee, consisting of Dr. P. P. Claxton, United States Commissioner of Education, and other National and State officials.

Several thousand creeds were submitted to the committee on manuscripts. Fifty of these were turned over to the committee on award, and "Creed No. 384" was selected as the best. The envelop containing the author's name was opened in New York City March 6, 1918.

It was then disclosed that the author of No. 384 was William Tyler Page, of Friendship Heights, Md. His creed was selected because it was not only brief and simple, but remarkably comprehensive of the best American ideals, history, and tradition as expressed by the founders of the Republic and its greatest statesmen and writers. Inquiry developed also that the author was a descendant of a President of the United States, John Tyler, and of a signer of the American Declaration of Independence, Carter Braxton; that he was born in Frederick, Md., the birthplace of Francis Scott Key; and that he attended the public schools of Baltimore, the birthplace of "The Star Spangled Banner."

THE AMERICAN'S CREED.

I believe in the United States of America as a Government of the people, by the people, for the people, whose just powers are derived from the consent of the governed; a democracy in a Republic; a sovereign Nation of many sovereign States; a perfect Union, one and inseparable; established upon those principles of freedom, equality, justice, and humanity for which American patriots sacrificed their lives and fortunes.

I therefore believe it is my duty to my country to love it, to support its Constitution, to obey its laws, to respect its flag, and to defend it against all enemies.—Hon. B. K. Focht.

The Legal Mind

BY WILLIAM W. BREWTON

Of the Atlanta Bar

Author of a Series of Philosophic Essays on Law

HE greatest individual entity is the moral mind; the most important social entity is the legal mind. For just as the concentric of the forces of individual destiny is pure right so the unity of the forces for social good is legal right. Right within the individual mind may progress toward moral entity; while right in society may progress toward a legal entity. That is to say, the individual mind may achieve for itself right which is purely moral; while in society the only right which may be achieved is that which is legal. For the individual, in achieving for himself right, is compelled to regard only morality; whereas society, in attaining for itself right, must in addition regard expediency. Right for society, hence, must forever be of lower order than right for the individual. Right for the individual may be pure, while right for society is forever conditioned impure. Right for the individual may be transcendental and known *a priori*, whereas right for society is empirical and may be known *a posteriori*.[1]

Moral right, hence, as an entity is the individual mind; while social right as such is the legal mind. I say *entity*, because we are regarding that which may be considered individual and social right as unities, and hence are regarding their essences.

But the legal mind, it is properly contended, is the possession of the individual; and it is to be inquired as to how it may be established as the great social entity of right.

The author of these essays has previously called the reader's attention to the supreme illusion which, from the earliest times, has beset the minds of men; to wit, that right is conditioned upon its acceptance by mankind, and hence that the establishment of right is necessarily collateral with the investiture of political power. That either political democracy or autocracy is ascendant does not determine the establishment of legal right throughout society. Indeed, the establishment of such right is dependent upon nothing else than the possession within society of the legal mind. The reader will be reminded that, while social impetus may precipitate revolution and force reform, it is the legal mind of some individual or the legal minds of some group of individuals that constructs the subsequent course of right,—because of the fact that the course of right which must prevail must be a legal one, and hence can be the work of only the legal mind. A mass of men capable of meeting an emergency are not necessarily capable of meeting the demands of contingency. That society presupposes law does not presuppose the construction by society of such law. For inasmuch as society is composed of units which are themselves individuals, each thinking of his own cause and each judging according to his own case, it is most obvious that the social good is best contemplated and judged by some man or group of men, rather than by society.

But if the welfare of society is better determined by the limited number of men in society who are most intelligent and discreet, our argument may be still further extended to the proposition that the highest social good is best determined by that single mind in society which is most legal. That is to say, inasmuch as the wisest determination of social good is judged by that mind which is most capable of discerning social need and of properly admeasuring to it morality, that mind in society which is in highest degree

[1] The author will discuss, however, in the succeeding essay to be entitled *The Legal Metaphysic*, in what sense legal right may be regarded as transcendental.

legal is the mind which should perform the work. Our conclusions here are most logically derived; and while it may never be known in society that its most legal mind is directing social right, it will be agreed that such should be the case. And hence it will be agreed that the great social entity of right is the legal mind. The legal mind, as we are regarding it here, the author concedes to be possessed by very few men. And happy indeed is that nation, or even that day, in which it flourishes. The final historian of the world will cite, as that era of greatest truth and happiness, the age of the legal mind. For while the respective ages of military, literary, religious, and other glory may be regarded as having been celebrated in experience and in history, the golden era of legal enlightenment throughout the world has yet to appear above the horizon of human destiny. Nor the age of Pericles, nor the age of Cæsar, nor the age of Luther, can ever be compared to it. For it—the age of the legal mind—because of its very nature and genius, can never be anything less than the fruits of the great and wonderful experiences of man in all his history. It will be the age of the establishment throughout the world of the *truths* attained from all the experiences of man preceding it—in war, in philosophy, in science, in religion, in laws, in literature, in art; it will be the age of *truth*.

But, we inquire, what is the character of the legal mind; and what is to be the mind of man in the age we have here idealized? That the world has known, and knows to-day, examples of it, the author is convinced. It shall be our purpose here to discourse upon certain of the underlying and necessary characteristics of the legal mind. For technical advantage, the author divides the survey under two principal parts.

Part One—The Mental Detachment.

Inasmuch as the legal mind is that mind which is capable of admeasuring morality and expediency,—respectively the form and the content of the law,—to possess such a mind, it is necessary to possess a discreet discernment. The genius of discretion is the capability of clearly and accurately positing within the mind the object-matter upon which judgment is to be made, unobscured by any other object-matter. Hence, legal discretion is the capability of conceiving the form and perceiving the content in their own respective entities or simplicities. But coincident with this introspection of the form and prospection of the content, other mental forms and varied phases appear, because of the fact that the human mind is not created solely for the purpose of legal thought and judgment, with no other interests or attachments. The forms of the mind and the objects in experience to which they attach themselves are manifold. These latter, nevertheless, are not to be allowed to conflict with or operate against the free exercise of legal thought. Yet they do of themselves, or automatically, so conflict with the attainment of legal determinations by the mind. Hence, such forms or mental exercises which operate against or obscure the course of legal thought are to be set aside by the will. That is to say, the mind must be detached from them, in order that the mental forces which properly devote themselves to the end of legal thought and determination may have free course.

It is only the most obvious and striking phases of the mind which are obstructors of legal thought that will engage our attention here; and which, it may be said, are but the most pertinent examples of a great number. In general, what is commonly discoursed of as *tendency* appears to be the principal enemy of the free and accurate exercise of legal thought; and the legal mind, as such, is never swayed by any of its many forms. The detachment, hence, which is incumbent upon the legal mind, is most strikingly illustrated in the *abnegation of the passions of the human heart*.[2]

I. The Abnegation of Impulse.

The legal mind is never obsessed by what we may term *tendency*. The legal mind tends toward nothing. The legal

[2] The figure is used for the purpose of an intimate clearness. The seat of all passion coming within our survey, of course, is within the mind itself, and not the heart.

mind directs its own course uninfluenced by any trait or characteristic. The admeasurement of morality and expediency is to be performed under the direction of will and wisdom. Legal determination is never to be made in a given way, because the mind "leans in that direction." Impulse, or feeling, springs from natural mental tendency or habit, and never from reason or logic. Impulse is unaccompanied by introspection, and rarely, if ever, by a proper degree of prospection. When the mind rushes to conclusion and judgment because so impelled, there has been a failure to introspect moral requirement and to fully prospect empirical data. The bases of judgment are hence unsound, and the judgment itself inaccurate and insufficient. Whatever degree of extenuation the world may agree to allow impulse as regards judgments affecting other concerns, as regards the law the author asserts that none should be allowed. Legal judgments from impulse are not to be condoned. Such are fraught with error and injustice. They are vindicated by neither the warrant of morality nor the stamp of a correct consideration of expediency.

The legal mind, then, if in pursuing a proper course of legal determination it is beset by mental impulse, will abnegate or set at naught such impulse, and will continue the proper pursuit. We are not to forget, of course, that our contentions are not that there are men who possess mentalities which are without impulse; but that he who has the legal mind has the ability to abnegate impulse and all other obstructors to the proper control of all his legal determinations. Our contentions are not that men are capable of changing the law of their natures, or are capable of destroying that within themselves which they did not create. It is the abnegation, and not the annihilation, of impulse of which we speak. And, too, impulse, because not the offspring of logic, is not necessarily evil. To follow impulse may be to end with truth, inasmuch as men possess good impulses as well as evil ones. The burning desire within the breast of the judge to see justice done, or the natural impetus with which the mind of the court rushes to that side of the cause before it which rings with the appeal of rectitude, we can only regard as impulses for good. Yet these too shall be set at naught when mental determinations are to be made. For all matters before the legal mind for determination are to be referred to its logical realm; because of the fact that, while to follow the course indicated by impulse may end in moral determination, it may also end in unmoral determination, inasmuch as the seat of morality is within the mental analytic which rests above all impulse.

Courts, thus, reserve judgment in legal matters until the offices of logical contemplation can be performed. Together with all the legal data which the court's mind refers to its realm of logic, it may also very properly refer its own impulses. That is to say, the conclusions which the legal mind attains from its initial regard of the legal matter submitted to it, and which it appears to naturally draw without contemplation or the operation of the will, are to be referred to mental logic for a right determination, before judgment is made. The legal mind, hence, abnegates conclusions from natural mental impulse or tendency, without concern as to what the final determination is to be and without speculation as to what the final mental sanction will be; and refers all data,— that which its own intuition offers and that which the practical facts present,—to the moral and logical reason.

II. The Abnegation of Self-love.

It is by the exercise of the will that all of those mental phases which operate against justice are set aside. The man who possesses what we have termed the legal mind is not necessarily free from the faulty characteristics common among men; though the legal mind, as such, will allow such characteristics as hinder moral legal determinations to have no influence. Chief among those mental traits which, in the light of legal logic, are to be classed as vanities, is the attachment to self. The mind constantly engaged with its own conceits comes far short of being the legal mind. For the determination of right is impersonal and free from the exaltation of the ego. It is detached from any consideration of its own merit; and is very far removed in-

deed from any regard for what means may be used to secure the praise of men. It is necessarily detached from such considerations, inasmuch as they substitute self, instead of morality, as the object of importance. Conceit is among the lowest and most vulgar phases of the mind. It is that phase which, with the one following in this discourse, is least analytical, and hence farthest removed from the intellect, which is the seat of morality. Considerations of the kind which center in the exaltation of self, or which spring from the love of self, immediately obstruct moral judgment, inasmuch as the latter is free and is centered in nothing. Self-love is a mental attachment to an object outside of morality, which is above it, and expediency, which is beyond it. That is to say, when in legal determinations the mind's conceits are allowed to influence, neither morality, which is that phase of the mind which dictates the right of the cause; nor expediency, which represents the data of the cause itself,—are fully regarded; whereas morality and expediency are the sole realms which should be allowed to control. The love of self is a vulgar conceit which has no place whatsoever in legal determination, and is one from which the mind is to be entirely detached before moral and correct legal judgment can be made.

The evidences of self-love associated with legal determinations are frequently obvious. The passion of envy which rises in the breast of the judge, who views before him the legal brilliance of the attorney, is one of its manifestations. The conceit of the court is the sole cause of such envy. The judge having schooled his mind to regard all questions of law only according to his own legal learning, and having become surfeited with a passion for regarding his own importance first and above other considerations, envies a display by the attorney before him of an intellect and legal skill transcending his own. Insomuch that rational adjudication fails. The passion of jealousy rising in the breast of the attorney, because of a superior ability shown by the opposing counsel, obscures his own righteous judgment of the cause on trial. Insomuch that his vanity supplants his morality. In either case, the cause of justice is hindered; because the attainment of legal right in causes on trial is conditioned upon the trial's being conducted by legal minds,—those above the influence of any of the passions of the human heart. The mental consideration is to be detached from the passion of self-love by the forces of the will itself, in order that what shall be regarded as the importance of the cause will be solely the admeasurement of moral intellect and the empirical data of the case,—that free and impersonal justice may be attained.

III. The Abnegation of Bias.

The most intricate mental tendency is that toward bias. Its ramifications are more extensive than those of impulse or self-love. Its abnegation is conditioned upon both strength of will and breadth of learning. Bias is that deep-seated mental attachment which is subtle in its self-infliction of consoling error. Bias rules where the will is weak and the perception small. Bias is an obstruction to justice, which is tragic. Yet the legal mind is detached from bias; for it is purely tendency and is never the result of the operation of logic. It cannot be founded upon any of the mental operations which are logically determinative. While the biased mind may be unaware of its prejudicial tendency, this ignorance exists because logic has failed to be brought to bear. This is the case with those minds which we term naturally biased. Where the mind is wilfully biased, or prejudiced against truth because self-centered and opposed to allowing any opinion to prevail except its own, there is evidenced the unmoral will. All reason which is brought to bear against this latter obstruction often fails; and this very properly may be termed the most unmoral obstacle in the way of justice. The attorney would far prefer to address his arguments to the impulsive or even conceited judge, than to the judge of narrow-minded prejudice. The judge who prejudges, and who is bent upon and will turn not from his prejudgment, finds his proper classification in the category of legal fools, instead of legal minds.

The abnegation of legal bias requires that there be a thorough mental searching to discover and discard all preconceived notions which have no bearing upon the matter for legal determination, and the constant discarding of all such notions as they arise during the trial of the cause. The legal mind's attitude is to be constantly against bias. Inasmuch as prejudiced notions are likely to thrust themselves forward at any time, the mind is to be continuously alert to cast them aside. Bias connotes judgment foreign to the subject-matter which is to be judged. It fails to judge accurately, because it fails to judge in any sense that which is offered for judgment. If bias obtains, judgment fails. For bias is a mental attachment arising within the mind itself, precluding the entrance into the mind of the matter for judgment, and hence also the reference of this matter to the moral reason. Bias is an obstruction arising within the mind which the mind must clear from its pathway, before reason and legal subject-matter can be associated and admeasured. Bias, in keeping with all other mental tendencies, is altogether outside of and below the mental analytic which alone is the tribunal before which legal matter shall be judged. Hence it is the foe of morality, and belongs only in the category of fanaticism.

To prepare itself against bias, the legal mind has brought to bear all of its learning in the law for instruction, and all of its strength of will for discernment. These are the weapons with which to defeat that subtle and intricate bias which arises unawares. In the case of the mind wilfully prejudiced, these weapons, of course, do not operate, inasmuch as such a mentality will not use them. The mind which elects to be biased is a rank foe to both society and the law.[3] But it is the unconscious bias, which so mysteriously and yet constantly attends the operations of even the mind which elects to be fair, that merits our speculations.

The legal mind discards all of the attachments which endeavor to substitute themselves for the legitimate mental state, in order that judgment may have free course. Contemplation is the means by which men are to ascertain and ferret out all these foes to legal discernment. Men are to introspect their mental states, and are not to believe that the practical objects of the world are the sole matters for purging. Our inherent characteristics, which stand against a high order of justice, are to receive our close scrutiny and criticism. We desire rational justice in society,—justice which approaches individual morality as near as it is possible for it to approach.

Part Two—The Mental Attachment.

Contemplative legal philosophy regards the generalities which characterize the legal mind. It is only in a general manner that the legal mind is attached. To the extent of its becoming a passion, the legal mind is attached to nothing. The legal mind is always open to the free course of the admeasurement of legal form and content; which is to say, as we have observed in preceding essays, the admeasurement of morality and expediency, which are respectively the impractical and practical departments of the law.

The legal mind is the skeptical mind. Attaching itself to the free and unhindered operation of legal admeasurement, the legal mind receives all representations and weighs them justly. Regarding with skepticism and reserve each representation as it arises, it thus holds itself open to a regard of all. And herein, indeed, is the key to the attainment of justice. For ordinary minds, because of their dogmatical attachment to such opinions as are dictated to them by their religion, or tradition, or education, either consciously or, tragically, unconsciously fail to justly apprehend many object-matters which are greatly pertinent to the cause of justice. For out of human experience there come up deep-seated examples of life, which the legal mind must never fail to appreciate, though they be pictures of life that it never dreamed could exist in the world. The cause of justice in cases on trial very often indeed proves itself to be on that side which prima facie mental prejudice

[3] The most evil form of this vulgar passion is the malignity with which the judge regards that display of legal ability, by the attorney, which is above his own comprehension.

would denounce. No; there must ever be the regard for generalities—for contingencies. The mind must be held open to receive their representations. It is thus indeed that the truths of human experience are learned. No legal or religious or scientific dogma must ever preclude from the mind an open and just regard for those underlying and unobserved phases of causes which, though too obscure to force themselves upon the narrow and biased mind, yet teach so much to the legal mind. Let whatever may arise have its weight; hold the mind open and free to regard all phases of human experience, all pictures of human life. Let the mind be skeptical to all, until all is laid before it; and hence let it never obstruct anything which may arise in the cause, but allow all which arises in the cause to flow into itself. The legal mind receives every phase of the cause,—all conditions of religion, science, laws, human experience, human joys, sorrows, labors, purposes, errors, reason, beliefs, and influences. The legal mind is all-comprehensive—all-just.

The legal mind is attached to the desire to attain justice in adjudication, and this attachment is evidenced by the presence of will to enforce such attainment. All the forms of personal and self-importance being abnegated, the legal mind holds firmly to the primacy of guaranteeing the means to justice. Hence, it is constantly attaching itself to those methods which present themselves as weapons against the foes of the operation of consistent logic. To that which offers itself as a preventive of the success of error, the legal mind attaches itself. Such attachment, *per se*, is only temporary, because it may not be permanently pertinent and useful. The legal mind does not adopt for itself a certain system of dogma which it is determined to utilize in the prevention of erroneous determination in all cases. It makes itself free to utilize only the methods suitable in each case. The legal mind is always unconditioned in its choice of its own *modus operandi* for keeping clear the progress of the free admeasurement of morality and legal object. The end to be attained is justice; the legal mind attaches itself to the means for this attainment. Because of the free operation of logic, the legal mind is able to discard such means as are suited to this attainment in one case, and unsuited in another.

But we are not to suppose, because the legal mind is not centered in conceits and self-love, that it is the unsophisticated mind.[4] Because bias is not retained does not establish that the legal mind regards one opinion as good as another, or considers that highest justice is necessarily derived from the association of the ideas of numbers of men. After regarding all ideas represented to it, the legal mind will be convinced often that its own judgment alone is the just one. In bringing to bear morality upon the legal objects of the cause, the legal mind may attain a determination which conflicts with the opinions of other minds connected with the cause, and for which it well understands that it can make no substitution. The sanction of its own careful and logical determinations must transcend the opinions of other minds. Any other course establishes weakness which is a general deterrent to justice. It attaches itself to the will necessary to prosecute its logical determinations. It cannot substitute for these the opinions of other minds whose logical processes have been beyond its apprehension. Such a course would be equivalent to a trust to chance. There can be no determination of the justice of a cause by a mind, excepting only as that mind itself apprehends the legal objects of that cause, and brings to bear upon them, by force of will, the analytical operations of the moral reason.

Wherefore, the essential attachment of the legal mind is courage itself. And here indeed is the citadel of justice. The will to enforce moral determination is paramount. Here alone is the guaranty. *The citadel of justice is within the legal mind itself.* The stronghold which establishes right is itself the power which determines it. Insomuch that the entity

[4] The term is used in order to convey with most facility the strictly modern meaning of worldly-wise confidence in the opinions of one's own mind. It is not used to convey, as its etymology would indicate, the meaning of the mind full of sophistry or vain dialectic.

of social right, instead of being the common opinions of men, is the legal mind. Social opinions, indeed, are not an entity, but, as regards the question of legal right, are froth. They begin nowhere, they center nowhere, they end nowhere. They can center in no logical, and hence no moral, determination of right. They can be enforced by no will to right. Yet the will to right is paramount; else justice fails. The legal mind, were there but one in society, would be the guaranty of society's legal right; for this guaranty could have an existence nowhere else. But such an hypothesis we are unable to view in application; for the legal mind in society cannot be said to be single. And its multiplication, we have said, is the key to our social happiness in the future.

William W. Brewster.

The Teetotum of Time

Again, if we are to entertain these hopeful abstractions, and to resolve all establishments into their imaginary elements in order to recast them upon some Utopian plan, and if it be true that all the men in a republican government must help to wield its power and be equal in rights, I beg leave to ask the honorable gentleman from New Hampshire, and why not all the women? They, too, are God's creatures, and not only very fair, but very rational creatures; and our great ancestor, if we are to give credit to Milton, accounted them the "wisest, virtuousest, discreetest, best;" although, to say the truth, he had but one specimen from which to draw his conclusion, and possibly, if he had had more, would not have drawn it at all. They have, moreover, acknowledged civil rights in abundance, and, upon abstract principles, more than their masculine rulers allow them in fact. Some monarchies, too, do not exclude them from the throne. We have all read of Elizabeth of England, of Catherine of Russia, of Semiramis, and Zenobia, and a long list of royal and imperial dames, about as good as an equal list of royal and imperial lords. Why is it that their exclusion from the power of a popular government is not destructive of its republican character? I do not address this question to the honorable gentleman's gallantry, but to his abstraction and his theories and his notions of the infinite perfectibility of human institutions, borrowed from Godwin and the turbulent philosophers of France. For my own part, sir, if I may have leave to say so much in the presence of this mixed, uncommon audience, I confess I am no friend to female government, unless indeed it be that which reposes on gentleness and modesty and virtue and feminine grace and delicacy; and how powerful a government that is we have all of us, as I suspect, at some time or other experienced! But if the ultra republican doctrines which have now been broached should ever gain ground among us, I should not be surprised if some romantic reformer, treading in the footsteps of Mrs. Wollstonecraft, should propose to repeal our republican Salique Law and claim for our wives and daughters a full participation in political power, and to add to it that domestic power which in some families, as I have heard, is as absolute and unrepublican as any power can be.—Senator Pinckney of Maryland in a speech on the Missouri question in 1820.

Doctrine of Provoked Malice in Malicious Prosecution

BY SOLON ORR

Of the Boise (Idaho) Bar

THE rule under this doctrine excuses the existence of malice and the want of probable cause on the part of defendant in suits for malicious prosecution, where the defendant was provoked to prosecute the antecedent criminal action by the unlawful or wrongful acts of plaintiff with respect to the transaction or subject-matter which gave rise to such antecedent prosecution.

The defense of provoked malice is not in conflict with the rules of probable cause. It rests primarily on a different state of facts. Where the defense is probable cause, the acts of plaintiff, known to the defendant must be of a character, and sufficient, to induce reasonably his belief in plaintiff's guilt; where the defendant relies on provoked malice, the acts of plaintiff need not suffice to induce such belief, but they must be of a character, and sufficient, to provoke reasonably the defendant's anger and resentment against the plaintiff. In both defenses the defendant's knowledge of the facts must precede the antecedent prosecution: In the one case, to show such belief as the cause thereof; and in the other, to show the provocation therefor.

Authority for the doctrine of provoked malice rests on a single decision which comes to us from the Louisiana tribunal. This is the case of David v. Aaronson, 105 La. 347, 29 So. 895.

The facts were: A, a merchant, owned a store about 10 miles from his residence. On returning home on the occasion in question, he carried with him the money which resulted from the week's cash sales, and amounting to $125. On the way D and another accosted him, and took him to task with respect to certain utterances of his wife. D then beat him severely. On arriving home, A found that his money was missing. Thereupon he prosecuted D and the other for assault and battery, and robbery. The accused were found guilty of the charge of assault and battery, but were acquitted of the charge of robbery. D then sued A for malicious prosecution, and based the suit on the prosecution for robbery. At the trial it appeared to the court and jury that A had been provoked to the prosecution complained of by the violence of D's assault. Accordingly the jury returned a verdict in A's favor. D appealed.

The appeal court pointed out that the columinous utterances by A's wife were not sufficient to justify the assault and battery.

Smarting under this treatment, and discovering that his money was missing, the charge, under the circumstances, was not entirely out of reason, although it was not true that D had robbed him. He was too hasty in bringing this charge against D. He went beyond proper bounds. This comment on the facts, practically in the language of the court, shows that A, "smarting" from the beating, was influenced by anger in bringing the charge of robbery. Again, the missing of the money after the attack of itself was not convincing, and was not sufficient to authorize a reasonable belief in D's guilt of robbery. Thus A had acted with malice and without probable cause as regards the prosecution for robbery.

The court said:

"After the attack, and doubtless greatly

smarting under the treatment, discovering that he no longer had on his person the amount he had when he left his store . . ., the charge brought, under the circumstances, is not entirely out of all reason, although, as the result shows, it was not true that plaintiff had robbed him. In the face of the fact that defendant was violently and without cause assaulted and beaten, we do not think that we should change the conclusion which is expressed by the jury." 105 La. 349.

In reasoning their decision, the court ruled that allowance should be made for defendant's provocation: "Defendant was too hasty in bringing charges against plaintiff, but none the less he is not to be judged as one should be who has not been made to suffer greatly at the hands of those whom he denounces." 105 La. 349.

Further, the provoked malice of the case was pointed out: "They [plaintiff and his brother-in-law] had actively taken part in arousing the bitter feeling which found vent in the charge made." 105 La. 349.

The want of probable cause is not to be considered in view of the provocation:

"Here, we think, the plaintiff's assault did have something to do with the charge of robbery in this: That defendant was illtreated by plaintiff and his brother-in-law to the extent that even this erroneous charge is not to be considered in the light of a case where there has been no provocation, or where the provocation was not as great as it is in this case." 105 La. 350.

It was considered, though, to the extent that the defendant was not permitted to recover damages for the assault and battery. Both were to blame; the plaintiff, for the assault and battery; the defendant, for preferring the robbery charge without probable cause. Neither was permitted to recover. The law excused, rather than exonerated, the defendant.

Plaintiff cannot recover damages for the consequences of a malice to which he has contributed: "One who has been violently assaulted is not always reasonable in his subsequent conduct and utterances regarding his assault. If he is not, the cause of his injustice and the injury suffered may be considered in arriving at a conclusion as to whether the victim of the injustice should recover damages for the after effects to which he has, in a measure, contributed." 105 La. 350. We may observe that plaintiff is deemed to have contributed to the injury of which he complained, by provoking defendant to the antecedent prosecution through lawless and exasperating conduct. This contribution to his own injury seems to be the ruling principle of this defense. The answer to the question: Did the plaintiff contribute to the antecedent prosecution of which he complains, by conduct which provoked defendant to prosecute him therefor?—determines the defendant's liability.

The principle in negligence law that the plaintiff's contribution to his own injury through his own negligence relieves the defendant from liability, is not a too distant analogy to the like principle here in view. Returning from so far afield, we may mention that in suits for malicious prosecution, where the acts and conduct of plaintiff are found to have afforded the defendant probable cause, it follows that plaintiff, by such conduct and acts, has contributed to the prosecution of which he complains. In such cases this contributory principle, for whatever reason, is seldom exploited. Yet, in some instances, the peculiarly glaring character of the contributing conduct has drawn the comment of the appeal court. Thus, a New York tribunal has said: "Where it appears that the plaintiff, by his own folly or fraud, exposed himself to a well-grounded suspicion of guilt, this alone is sufficient evidence of probable cause."[1] Thus, though the doctrine of provoked malice is only rarely interposed as a defense, its determining principle of contributory conduct is not strange to the law of malicious prosecution.

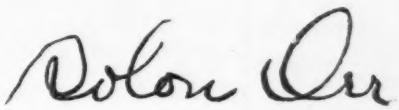
The comment of the court in David v. Aaronson, 105 La. 347, 29 So. 895, that in view of the defendant's provocation he is not to be judged as one should be who has not been so provoked, gains some slight explanation from the Michigan supreme court. It was there said: "In judging of a man's malice it is often very important to know whether he was provoked to anger in what he did, or whether he proceeded in cool blood and

[1] Bulkeley v. Smith, 2 Duer, 277.

with deliberation. . . ."[2] The facts of the latter case were such that the question of contributory conduct was in the court's contemplation.

Probably in many instances the defendant acts from sheer provocation in setting in motion the antecedent prosecution. Frequent and exasperating trespasses or other annoying conduct on the part of plaintiff, for example, might give rise to the provocation. In his ire, the defendant would act with the maximum of malice and with barely a semblance of probable cause. His haste would probably intercept him from that house of refuge,—advice of counsel. In such cases, if it is established that the tortious conduct of plaintiff toward the defendant provoked the latter to institute the wrongful prosecution, the rule of provoked malice will excuse the defendant from liability, without approving his conduct.

[2] Carter v. Sutherland, 52 Mich. 601, 18 N. W. 378.



The English Heritage

Our law, our Magna Charta, our habeas corpus, our parliamentary freedom, our Bill of Rights, our Declaration of Independence, our Constitution, all of the muniments of our civil, political, and individual liberty were written in the English language. It is not an accident that the only language which has been able to perpetuate liberty allied with law and with order has been the English language, because the history of the language and the history of the people who spoke it and speak it have been identical upon those lines. That is not all. When we come to consider this great language that we speak, with the possible exception of Homer and of Dante, one a Greek and the other an Italian, there is nobody who will stand in the same class with Shakespeare or Milton; when we come to consider the sweet singers in the language, there is nobody who stands with Tennyson, with Moore, and with Burns known to the language of any people in this world; and when we come to consider the science of the world, beginning with Sir Francis Bacon and running down through Sir Isaac Newton and Huxley and Darwin and Agassiz to the last of them all, to the men who are now taking command of the scientific information of the world and showing English and American and Canadian and Australian ability in that line, and running through the great metaphysicians, Herbert Spencer, Sir William Hamilton, and Stewart, and all the balance of them down to now; the great inventors who invented the steam engine, the spinning jenny, the railroad, the telegraph, and nearly everything else worth having, including the electric light, it is this race that has produced them.—Hon. John S. Williams.

Forewarned is Forearmed

BY THOS. J. TYDINGS

Author of "The Fraudulent Release," "The Libelous Will," etc.

"He who hath done iniquity shall not have equity."

AS OLD Fogle was locking his office door, one of the Brown boys, James, came up the stairway.

"Well, well, Jimmie, what do you want this time of day?" inquired Fogle, with a smile as he pictured in his mind the possibility of a fat fee. "Come right in, Jimmie," continued Fogle, as he unlocked the office door and preceded Brown into Fogle's office.

"You see, Mr. Fogle," replied Brown, "we found a sort of contract when pap died that we boys thought might bring us some money."

"Yes," smiled Fogle, as he rubbed his hand backwards over his bullet-shaped bald head and adjusted his checked vest over his protruding stomach.

"The boys been talking about this paper ever since we found it in pap's trunk, and we thought as how you might get that land back for us. So the boys told me to come up to see you about it," continued Brown.

"I'll be only too glad to look it over for you, Jimmie, and if you boys have any case at all, I'll get whatever is coming to you," replied Fogle.

"Well, now you just read that writing out loud so we both can hear it, and then I want you to tell me what you can do about it," said Brown as he handed a wrinkled and worn-looking sheet of foolscap paper to Fogle.

Fogle took the paper, and, after adjusting his imitation tortoise-shell glasses on his fat red nose, read as follows:

"———, Missouri.

I hereby agree, upon receipt of $5, that I will convey by proper warranty deed to Samuel Brown the following land in ——— County, Missouri, to wit: the S. W. ¼ S. W. ¼, sec. 18, twp. 56 N., R. 17 W.

Given under my hand and seal this 6th day of October, A. D. 1911.

William Brammond. [Seal.]

"By George, Jimmie, that sounds all right," ejaculated Fogle when he finished reading.

"That's a good contract, ain't it, Mr. Fogle?" asked Brown.

"Why certainly it is," replied Fogle.

"Well, if it is, what can we do about it?"

"Do about it?" exclaimed Fogle. "Why offer old man Brammond $5 and demand a deed from him for that land, that's what."

"What will it cost us, Mr. Fogle, to get this land?"

"I'll tell you what I'll do, Jimmie. I'll take the case for 25 per cent of what we get out of it."

"That"s all right, Mr. Fogle. The boys thought maybe you'd take a chance at it for one third."

Fogle rubbed his hand over his head, as he replied: "That's what I ought to have, but my word is as good as my bond, so 25 per cent goes."

"All right, you can go ahead with it, and here's the $5 for Mr. Brammond. There ain't no use to fool with him, because we boys have been talking to him, and he got mad and told us that he was not goin' to deed us anything. Said that anybody who was as crooked as pap was oughtn't to have anything."

"What's come over old Brammond anyway?" remarked Fogle.

"Oh, he hit the trail when Billie Sunday was here last summer."

"I wonder if Brammond has consulted a lawyer yet?" asked Fogle.

"Yes, I think he's been talking to young lawyer Strong."

"Oh, well," laughed Fogle, "if he's old Brammond's only hope, we'll have easy sailing."

"Well, I'll he in here next Saturday, Mr. Fogle, and I'll see you then," concluded Brown as he left the office.

The next morning Fogle called at young Strong's office.

"How's my young friend this morning?" was Fogle's greeting to the young attorney.

"Oh, fairly well, Mr. Fogle," replied Strong. "Have a seat, Mr. Fogle."

"I believe I will as I want to have a talk with you about the Brown-Brammond affair, as I understand that you have been retained by Mr. Brammond."

"Yes, Mr. Brammond paid me a retainer a few days ago, and I am expecting to represent him in any proceedings affecting his claim to the land which he got from Mr. Brown."

"That's good, Strong, glad you are getting started in the practice. I always like to see a young fellow step in and get his feet wet. It gives him experience, even if he can't always win."

"I am expecting to win for Mr. Brammond, however," replied Strong.

"That's just the trouble with most of us, son, our expectations generally exceed our power of realization."

"Then we have only ourselves to blame for expecting too much," replied Strong.

Fogle laughed, and Strong fumbled the pages of a law book on his desk in front of him. Strong looked at Fogle as he asked,

"What kind of a proposition have you to make, Mr. Fogle?"

"Just one, Strong, and that is for old man Brammond to accept $5 and make a deed to Mr. Brown's heirs, as he agreed to do."

"I've never seen such an agreement, Mr. Fogle."

"I have it all right," assured Fogle.

"Let's see it, then."

Fogle handed Strong a paper which the latter read as follows:

———, Missouri.

I hereby agree, upon receipt of $5, that I will convey by proper warranty deed to Samuel Brown the following land in ——— County, Missouri, to wit: the S. W. ¼ S. W. ¼ sec. 18, twp. 56 N., R. 17 W.

Given under my hand and seal this 6th day of October, A. D. 1911.

William Brammond. [Seal.]

When Strong had finished reading, Fogle asked:

"What do you think of that?"

"Worthless paper, Mr. Fogle."

"Worthless paper?" exclaimed Fogle.

"Yes, sir, worthless paper, that's all it is."

"You've got some nerve, Strong, I know, but if you can tell me how you are going to get around that agreement, I'll treat, that's all I got to say."

"Easy enough, Mr. Fogle," answered Strong.

"Do you mean to tell me that you think you can defeat an action for specific performance on that contract?"

"Yes, sir, I do," replied Strong.

"Well, just for the sake of curiosity, let's see if you and me can agree as to what an action for specific performance is."

"That's elementary to a lawyer, Mr. Fogle."

"True enough it ought to be, but I fail to understand why, if you really know what such an action is, how you can have the nerve to resist my claim in this case."

Strong blushed as he replied: "Mr. Fogle, just to let you know what such an action is, I will say that an action for specific performance is a suit by a party to a contract, who has fully performed his part of the contract, to compel the other party to it to perform his part of the contract."

Fogle rubbed his head with his hand as he chuckled, "Right, by crackey."

"Oh, I know you are simply playing with me, Mr. Fogle, and I'd rather not talk further with you about this matter. If you wish to file suit against my client, go ahead."

"Hold on, son, not too fast. I was only kidding you, and I beg your pardon. I really want to know your side of this case. I do not wish to offend you in

the least," pleaded Fogle, who saw the interview about to be abruptly ended.

"Well, Mr. Fogle, don't play with me. I know I'm young and haven't had much actual experience in the practice, but I do claim to know something about law, and, for Mr. Brammond's sake, I am going to give you a statement of his defense. I can do so because I know that what he expects to show is the plain truth, and no one can get around it."

"That's the way to talk, Strong," replied Fogle, who felt young Strong was now going to play into his hands.

"Well, sir, the unvarnished truth is, and your clients cannot get away from it, that at the time Mr. Brown conveyed this land to Mr. Brammond, Brown was insolvent, and he deeded the land to Brammond for the purpose of preventing his, Brown's, creditors from taking the land."

"Yes, but you don't claim that your client can keep the land, do you, Strong?"

"Certainly, certainly he can."

"You have a new code of morals then, not saying anything about the law, young man."

Strong's eyes sparkled as he flashed at Fogle:

"Why Mr. Fogle, you certainly have no intention of lecturing me on morals, have you? And so far as the law is concerned, there is no law of this state that will compel Mr. Brammond to convey this land back to Brown or to his heirs. If anyone besides Brammond should have the land, it should be Brown's creditors, but"—

"Oh, but the devil," interrupted Fogle. "I won't stand for any such talk."

"Sit down then, Mr. Fogle."

"Yes, I am sitting down, and when I get through with this case, you and old man Brammond will feel like crawling into a hole and pulling the hole in after you, too."

"Possibly so, Mr. Fogle, but I hardly think so," commented Strong, who appeared to enjoy Fogle's barometric temperature.

"Yes, and you'll think different young man, when this case is over."

"Mr. Fogle, did you ever hear of the maxim, 'He who hath done iniquity shall not have equity?'" inquired Strong.

"Before you was born, sir. I know all about that maxim."

"Well, sir, you had better apply that maxim to this case, for it will be sufficient to defeat your action for specific performance."

"Is that so?" snarled Fogle.

"Why, certainly it will. You know that the courts won't enforce the reconveyance of lands which have been conveyed to hinder and delay the grantor's creditors, and I have no hesitancy in saying to you that my advice was and is to Mr. Brammond for him to resist any action which may be brought on that agreement or contract, and for him to turn the land over to a trustee for the benefit of Brown's creditors. You had better read the case of Mitchell v. Henley, 110 Mo. 598, 19 S. W. 993, and you might also examine Kitts v. Wilson, 130 Ind. 492, 29 N. E. 401."

That afternoon, Fogle read the two cases referred to by young Strong, as well as other decisions on the subject, and exclaimed with disgust:

"By George, young Strong has got me beat."

Thos. J. Tydings

Editorial Comment

Case and Comment

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Presumption of Survivorship Among Those Perishing in Same Disaster

THE American poetess, Mrs. Lena Guilbert Ford, best known as author of the war song, "Keep the Home Fires Burning," was killed in the air raid on London which occurred early in March. At the inquest an army expert testified that two bombs, which exploded simultaneously, were dropped upon her house. The coroner's jury found the death of Mrs. Ford and that of her son, Walter, was due to "suffocation from the collapse of a house caused by the explosion of bombs from a hostile aircraft."

At the inquest an attorney, representing Mrs. Ford's divorced husband, examined the witnesses carefully in an effort to establish whether Mrs. Ford or her son died first. This became important in view of the fact that all her property was left to her son.

The physician, who was in charge of the medical work at the scene of the raid, said it was very difficult to state which had died first. After he had called for testimony from the Royal Engineers, who had worked on the wreckage, regarding the quantity and disposition of the *débris* found around the two bodies, he expressed the opinion that the son had died first, as the wreckage was denser around him and pressed so closely about his face and body it was impossible that he could have long survived.

It was testified that Mrs. Ford had suffered from heart disease, but the physician said this did not contribute to her death.

The question as to presumption of survivorship among those who perish in a common calamity has been treated extensively by legal writers. The theories of the civil and the common law upon the subject are directly opposed. By the Roman law there was no presumption that those who perished in the same disaster all died at once. It was presumed that males survived longer than females, and that the younger and more vigorous survived their elders, unless all were under fifteen, when the eldest was deemed to have lived the longest.

At common law, on the contrary, where two or more persons perish in the same disaster, and there is no fact or circumstance to prove which survived, there is no presumption whatever upon the subject. None arises from considerations of age or sex, and the law will no more presume that all died at the same instant than it will presume that one survived the other. It treats the case as one to be established by evidence, and lays the burden of proof on him who claims survivorship. If he is unable to furnish such evidence the question of survivorship is regarded as unanswerable, and the

succession of property is determined as if the deaths synchronized.

The rules of the English common law on this question have always been applied in the United States except in the states of Louisiana and California, both of which have codes embodying certain presumptions of survivorship arising out of age or sex, among those who meet death in the same disaster.

On the night of June 14, 1838, the steamer Pulaski, having just left Charleston, South Carolina, for Baltimore, Maryland, was destroyed by the explosion of one of her boilers. Out of that calamity grew the two earliest cases in the United States dealing with this subject,—one in South Carolina and the other in Massachusetts. Pell v. Ball, Cheves, Eq. 99, sprang from the fact that, among the passengers who perished on the Pulaski there was a family consisting of Mr. and Mrs. Ball and their adopted daughter, and that Mr. Ball left a will under which it became material to determine whether Mrs. Ball survived him. The evidence was slight, but the court deemed it sufficient to prove that the wife outlived her husband. She was seen and heard calling for him some time after the explosion, while her husband was neither seen nor heard, unless he was an unidentified man who dropped a coat marked with his name into a boat, and at once disappeared. The court held that where there was any evidence whatever, even though it was but a shadow, it must govern the decision of the fact.

The other case which grew out of this disaster was Coye v. Leach, 8 Met. 371, 41 Am. Dec. 518. Here it was a grandfather, his granddaughter, her husband, and a grandchild who perished, and it was agreed that no evidence was obtainable tending to show which of these four persons actually survived. There were no circumstances from which facts might be inferred, and the case had to be determined without aid from these. "We are therefore," said the court, "brought directly to the inquiry whether in the case of several persons perishing at sea in one common disaster, the question of survivorship can be settled by any legal presumptions deduced from the single fact of difference in age and sex." The plaintiff claimed in the right of the daughter as survivor, and the court held that he was bound to show by evidence that she had survived, and that in this he had failed.

A more recent case is Broome v. Duncan, — Miss. —, 29 So. 394, which went upon its own peculiar facts and circumstances. In that case the husband and wife left home together after 11 A. M., and entered a near-by wood, from which two shots in succession were heard before noon. About 6 o'clock their bodies were found, the wife's with a bullet wound, still warm and bleeding, and *rigor mortis* not yet supervened, with indications of struggles and movements on her part after receiving her mortal wound; the husband's in a crouching posture, his rifle across his knees, the top of his head shot off and his brains scattered about. It was decided that the husband had inadvertently or intentionally shot his wife and then committed suicide, that his death was instantaneous, and that she survived him some little time.

In Ehle's Will, 73 Wis. 445, 41 N. W. 627, the question of survivorship was decided on the facts proved. An old man, his son, and the latter's wife, and three children, were all burned to death in a fire which destroyed their dwelling in the nighttime. There were many circumstances indicating the origin of the fire in the old man's room,—an unsafe stove, a lighted lamp, a bare candle in a closet shut off by cotton curtains,—and that it was under considerable headway before other parts of the house, on the opposite side of which the rest of the family roomed, were attacked by the flames. The places where the bodies were discovered also helped the court to conclude that the old man died first, his son next on the way to assist the father, and the wife and children last and together.

But in Re Willbor, 20 R. I. 126, 78 Am. St. Rep. 842, 37 Atl. 634, where three sisters, who left wills in each other's favor, perished in the burning of their house, with no circumstances appearing from which it could be inferred that either survived the others, it was held that the rights of succession to the estates would be determined as if death

occurred to all at the same moment. This case is accompanied in 51 L.R.A. 863, by an able editorial note in which the foregoing cases and many others are discussed.

War for Humanity

WAR, in a good cause, is not the greatest evil which a nation can suffer. War is an ugly thing, but not the ugliest of things; the decayed and degraded state of moral and patriotic feeling which thinks nothing worth a war is worse. When a people are used as mere human instruments for firing cannon or thrusting bayonets, in the service for the selfish purposes of a master, such war degrades a people. A war to protect other human beings against tyrannical injustice; a war to give victory to their own ideas of right and good, and which is their own war, carried on for an honest purpose by their free choice, is often the means of their regeneration. A man who has nothing which he is willing to fight for, nothing which he cares more about than he does about his personal safety, is a miserable creature, who has no chance of being free, unless made and kept so by the exertions of better men than himself. As long as justice and injustice have not terminated their ever-renewing fight for ascendancy in the affairs of mankind, human beings must be willing, when need is, to do battle for the one against the other.—*John Stuart Mill.*

This was written a half century and more ago, but it might have been written yesterday, it applies so well to to-day's conditions. The truth is the same yesterday, to-day, and to-morrow.

American and English Income Taxes

IN COMPARISON with the tax levied in England on incomes our own income taxes are moderate, indeed.

In England the tax on incomes of $1,000 is 4½ per cent, in America nothing.

In England the tax on incomes of $1,500 is 6¾ per cent; in America nothing for married men or heads of families, and 2 per cent on $500 for an unmarried man.

In England the tax on an income of $2,000 is 7½ per cent; in America nothing for a married man or head of a family, and 2 per cent on $1,000 for unmarried men.

The English income tax rate also increases more rapidly with the growth of the income than ours, a $3,000 income being taxed 14 per cent, $5,000 16 per cent, $10,000 20 per cent, and $15,000 25 per cent, while our corresponding taxes for married men are respectively two thirds of 1 per cent, 1½ per cent, 3½ per cent, and 5 per cent, and only slightly more for the unmarried, due to the smaller amount exempted, the rate being the same.

Recovery for Injury Due to Swaying of Car

SWAYING of railroad trains or street cars is of common and frequent occurrence, and results in numerous instances from natural inequalities of surface, and necessary curves, switches, and guard rails in the construction of the roadbed, without there being any defect in the train or car, or in the track, or any negligence in the operation of the train or car. In such case, this motion is to be considered as incidental to this mode of travel, and to have been contemplated by the passenger, and any injuries resulting to him therefrom are unavoidable accidents, for which he cannot recover.

To furnish ground for an action against a railroad company for injuries to a passenger from the swaying of a car, it must appear that the swaying was more than is ordinarily to be expected, and that it was due to a defect in the car or track, a negligent or dangerous rate of speed, or some other cause for which the company can be held responsible.

As appears from the cases, swaying of cars is very rarely due to defects in the roadbed or cars, but is usually due to the operation of the cars at a rapid rate of speed around curves and into and out of switches, and the liability of the railroad company depends, in the absence of contributory negligence on the part of the injured passenger, upon the fact as

to whether or not the rate of speed at which the car is so run is an unsafe one under the circumstances, which is usually a question for the jury. The general rule is applied in the case of Chesapeake & O. R. Co. v. Needham, — C. C. A. —, 244 Fed. 146, L.R.A.1918A, 1169, which holds that a railroad company is not liable for injury to a passenger on a fast train by the lurching of the train due to sharp curves in the tracks caused by the configuration of the country if the track is well constructed and the train properly operated under the circumstances of the case.

Effect of Execution of Insured for Crime on Right to Recover Life Insurance

THE conclusion in Scarborough v. American Nat. Ins. Co. 171 N. C. 353, 88 S. E. 482, Ann. Cas. 1917D, 1181, L.R.A.1918A, 896, that the risk of the execution of the insured for violation of law was not covered by an ordinary life policy although there was no express exception of such risk, is in accord with all but one of the decided cases.

Its further holding that the incontestable clause, providing that the policy should be incontestable after a stated period except for fraud, did not preclude the insurer from contesting liability on the ground that the insured was executed for the commission of a crime, is of particular importance in view of the fact that there is little authority on this question.

The same conclusion with respect to such a clause where the insured was executed for a crime was reached in Collins v. Metropolitan L. Ins. Co. (1905) 27 Pa. Super. Ct. 353, where the court said:

"The learned counsel for the appellant contends that the effect of the clause in the policy, 'after two years this policy shall be noncontestable except for the nonpayment of premiums as stipulated or for fraud,' is to deprive the insurer, after the expiration of the period mentioned, of every defense founded in the express provisions of the contract or the law applicable to such contracts, against any claim that may be made by the insured or his legal representatives. We cannot give this clause that effect. . . .

"The question, therefore, is whether an ordinary life policy, containing no applicable special provisions, is a binding contract to insure against a legal execution for crime. Had the policy expressly insured against this risk,—that is, that in consideration of the insured paying a certain sum of money, year by year, the company would, in the event of his committing capital felony, and being tried, convicted, and executed for that felony, pay to his legal representatives a certain sum of money,—such a contract could not be sustained. It must be held to be void upon principles of public policy. . . . The reason for the refusal of the courts to aid one who founds his cause of action upon his own criminal act is because of the public interests involved, which require that the laws against crime be enforced, and that the courts aid no man to take a profit from their violation. The rule is enforced upon the ground of public policy alone, and not out of consideration for the defendant, to whom the advantage is incidental."

What is my Share of the Cost of the War

THIS is a question which thoughtful people have been asking, and the economists of the country have been studying. In order to arrive at an intelligent answer, Bankers Trust Company of New York has had its statistical department make a careful study of the problem, and as a result the company has now issued for free distribution a pamphlet which is intended to enable one to determine what would be his fair share of the burden of the cost of the war, if this burden were equitably distributed.

The company estimates that during the first year of the war the expenditures of the government have amounted to over 9½ billion dollars, or more than fourteen times the average expenditures of the seven years previous to the war. The

advances made to our Allies have accounted for nearly one half of the total expenditures. It is estimated that the expenditures for the second year of the war will amount to about 15 billion dollars. Assuming that customs and excise taxes will produce 1½ billion dollars, this leaves about 13½ billion dollars which must be raised from the proceeds of bond sales and of the income taxes. The purpose of the pamphlet under review is to determine how this burden of 13½ billion dollars shall be prorated among the people of the United States. While it is estimated that the savings of the nation, available for reinvestment in various forms, will amount to something like 18 billion dollars during the coming year, it is thought that at least 8 billion dollars out of this amount must be permitted to remain invested in the form of increased working capital, or must be used to provide for capital expenditures essential to the health and welfare of the people of the country. This leaves about 10 billion dollars which can be counted upon as available to the government for the conduct of the war, and of this amount it is assumed that about 2¾ billion dollars can be contributed by corporations and about 7¼ billion dollars by individuals. It will be seen that the remaining 3½ billion required by the government, therefore, will have to be provided through the form of loans from the banks.

The purpose of the pamphlet is to equitably apportion the burden of the 7¼ billion dollars to be provided by individuals. With this object in view, a very careful study has been made of the income tax returns for 1915 and 1916, and of statistics in regard to the distribution of wealth and income among families heretofore prepared by economists. On the basis of these statistics a table has been prepared which, it is believed, indicates with a close approximation to accuracy how much of a given income anyone should contribute to the expenses of the government in order to carry his fair share of the financial burden of the war.

The study brings out the very interesting fact, that, while a few rich families have incomes aggregating a large amount, yet approximately 75 per cent of the incomes of the 27 million-odd families into which the people of the United States are grouped is received by families having incomes of less than $2,500 a year, while 85 per cent of the total income is received by families having incomes of $9,500 or less. The 27 million families have incomes ranging from under $850 to incomes ranging over $5,000,000. A person or family with the smaller income would be called upon to contribute $82 or less—or say about 10 per cent of his income. From this amount the percentage rises, until the man having the larger income finds that his share would be in the neighborhood of 80 per cent of his income. For example, the amount contributable on an income of $1,000 is $99; on $1,250, is $135; on $1,500, is $175; on $2,000, is $270; on $2,400, is $360; on $3,000, is $507, etc.

By reference to the table it is possible for anyone having an income ranging between these two amounts to determine quickly the amount which, theoretically, he should be prepared to turn over to the government, either in the form of taxes, or in purchasing Liberty Bonds.

The pamphlet concludes:

"The response to previous loans has shown great loyalty and enthusiasm, but we are settling down now to the long grind, and entering a time when sober calculation is the part of wisdom. The first reaction to a study of the table is that the charge against incomes is too heavy to be borne. Further study and reflection brings one to the definite conclusion that, on the average, something like this must be done if the government is to be provided with the means to push the war to an early and successful termination."

War Service for Lawyers

THE American Bar Association has appointed a Special Committee for War Service, whose function is to supply the right lawyers to any Department of the Government in need of men with legal training. This activity has the sanction and cordial approval of President Wilson and his Cabinet, who have suggested that it be carried on in co-op-

eration with the United States Public Service Reserve of the Department of Labor.

The Special Committee consisting of John Lowell, Chairman, and Lawrence G. Brooks, Secretary, is now established in Washington at 1712 I Street, where it is engaged in making a survey of the several Government Departments and Bureaus to ascertain the kind of work at present being done by lawyers, the number of additional lawyers now needed, and the extent of the probable future demand for members of the legal profession. The Committee, on the other hand, is canvassing the situation through the many channels open to the American Bar Association, to discover what lawyers of ability are available for the Government.

The survey so far made shows that lawyers are wanted by the Government in a variety of capacities, both legal and executive, volunteer and compensated, to work in Washington and elsewhere,—that the Association, in short, has a splendid opportunity for national service. The Special Committee is now preparing as rapidly as possible to perform this service, and expects soon to be in a position promptly and capably to answer the call of any Department for men with legal experience.

The Committee asks that all lawyers willing and able to serve the Government at this time send their names to the American Bar Association at 1712 I Street, Washington, D. C., with a brief statement of their training and qualifications and the conditions under which they are able to serve.

American Institute of Criminal Law and Criminology

THE next meeting of the American Institute of Criminal Law and Criminology will be held at Cleveland, Ohio, on Monday, August 26, 1918. There will be three sessions, 10 A. M., 2:30 P. M., and 8:30 P. M.—all to be held in the Lattice room of the Statler Hotel.

Collection of Internal Revenue

COURTESY, square dealing, and service are required by the Internal Revenue Bureau of its thousands of employees who are aiding in the collection of war revenues. A manual has been sent out for their use with the purpose of making as pleasant as possible the task of the American citizen to find out what his Federal taxes are and how to pay them.

The internal revenue officers are instructed to inform the taxpayer of all his rights, to require of him not 1 cent more than the law demands, while at the same time securing for the Government all that justly is due it.

It is estimated that 7,000,000 American citizens will pay income taxes this year,—a great increase from the few hundred thousand heretofore paying such taxes.

The work of estimating and collecting taxes from such a great number of citizens is one of great magnitude, and that it should be done fairly and without friction is an achievement worth much effort.

Congressional Time

THE Daylight-Saving Law, which went into effect on April 1, has added an extra hour of daylight to the nation's working schedule. Such a measure is now in operation in Great Britain, in France, in Germany, in Austria, in Italy, in Holland, in Portugal, and in Scandinavia.

Honorable William P. Borland, who introduced the measure in the House of Representatives, explained its purpose as follows:

> The proposition simply consists of exchanging one hour of artificial light for one hour of natural light. It provides for advancing the clock during the period of time embraced practically between the vernal equinox and the autumnal equinox one hour.
>
> The effect of that will be to move forward the business habits of the community one hour nearer to sunrise. In no other respect will the habits of the community or any of the schedules of hours of labor be changed, but the result of advancing the clock will be to utilize one hour of sunlight nearer to the time of sunrise and cut off one hour of artificial light at the end of the day.

It also has the effect of providing an extra hour of daylight between the close of business in the afternoon and sunset. It confines the sleeping period more nearly to the period of actual darkness, and the working and recreational period more nearly to the period of actual daylight.

The first section of the act adopts the standard time now in use throughout the country—established by the American Association of Railway Managers—as the standard time of the United States, and provides that the boundaries of the zones shall be fixed by the Interstate Commerce Commission, having regard for the convenience of commerce and existing junction points and division points of the common carriers. There will be no interference, therefore, with the standard time now in general use.

The second section provides that within the zones thus created the standard time of the zone shall govern the movement of all common carriers engaged in interstate commerce, and shall be the official time of the United States, regulating its courts, offices, and legal proceedings done under the statutes, laws, or regulations of the government.

Having thus fixed the official standard time of the United States, the third section provides that at 2 o'clock antemeridian of the last Sunday in March of each year the standard time of each zone shall be advanced one hour, and at 2 o'clock antemeridian of the last Sunday in October of each year the standard time of each zone shall, by the retarding of one hour, be returned to the mean astronomical time of the degree of longitude governing such zone, so that between the last Sunday in March at 2 o'clock antemeridian and the last Sunday in October at 2 o'clock antemeridian the standard time in each zone shall be one hour in advance of the mean astronomical time of the degree of longitude governing each zone, respectively.

Representative Borland stated:

This bill has been specifically indorsed by the United States Chamber of Commerce and by hundreds of organizations of business men throughout the United States. It has been urged also upon Congress by the American Federation of Labor. An especial plea for its passage has come from the advisory commission of the Council of National Defense on the ground that it is an important war measure. The medical bodies throughout the country have agreed that it is important from the standpoint of health and sanitation in removing much of the eyestrain of individual workers, and providing more hours of daylight for healthful recreation. The United States Shipping Board has petitioned Congress for its passage and the Fuel Commissioner made a special plea to the President of the United States setting forth the importance of this measure in the conservation of fuel.

It has been estimated by Mr. Brunet, who is a skilled public service engineer in Providence, Rhode Island, that the measure will save $40,000,000 in fuel in the United States in one year. It is expected, also, that the enactment of this law will lead to a good deal more of food production, particularly by small gardeners in the suburbs of the smaller cities and villages.

The Daylight-Saving Bill had to run the usual gauntlet of criticism and banter. Said Mr. Thomas:

It is proposed by this measure to set the clock forward and thereby set the time back, so that those who now begin work at 9 o'clock will begin work at 8 o'clock and work eight hours. It is claimed that an hour of daylight will thereby be saved. How that can be done all the real and mythical lawyers that ever existed in Philadelphia can never figure out. The only thing accomplished is to compel certain people to go to work an hour earlier and quit an hour sooner. In either case their work would be done during daylight, perhaps with more profanity on account of having to arise earlier in the morning.

I do not believe these modern Joshuas can make the sun stand still or rise one minute earlier or set one minute later, or cause the moon or the planets to stay in their courses by any legislative legerdemain or so-called daylight-savings device, even as an alleged war measure. . . .

They contend that by turning the clock forward an hour time in its ceaseless flight will be turned backward an hour, and an hour of daylight more will be the result.

If that be true, then if the clock be turned forward two hours there will result two hours more of daylight, and by a parity of reasoning if the clock be turned forward twelve hours, the result will be all daylight, and darkness will take its quick and final flight from this terrestrial globe.

Mr. Wingo observed:

We have tinkered with everything; we have tried to repeal the law of supply and demand, now you are tinkering with the clocks, and if you keep up this foolishness, some fool will ask us to suspend the law of gravity.

I read a magazine article last Sunday proposing a winter thermometer. It was a serious article, advocating that Congress provide for a winter thermometer and fix the freezing point at 45° Fahrenheit, on the serious theory that people generally try to keep their apartments and houses at between 60 and 70 degrees of heat, and they could look at the thermometers and be fooled, and in that way save fuel next winter. I have as much respect for that proposal as I have for this. You cannot change the habits of a nation, and that is what you are trying to do by this legislation. A majority of the men who advocate this character of legislation have not seen the sun rise in twenty years [applause and laughter], and they will not see it if you pass this bill.

Mr. Platt stated:

Under the present standard-time system there are places where the clocks are nearly an hour faster than the real sun time, and the people in those places are to-day complacently getting up at 6 because the clock says 7 without knowing the difference. That proves the value of the plan without drawing on the experience of European countries. My friend, the gentleman from Arkansas [Mr. Wingo], says you cannot change the habits of the people by law. The answer to that is that the habits of the people in the matter of getting out of bed and getting into bed and going to work were changed when the standard-time system was adopted.

It is said that Benjamin Franklin was the first to suggest the idea of daylight saving. He wrote in his autobiography:

"In walking through the Strand and Fleet street one morning at seven o'clock I observed there was not one shop open, though it had been daylight and the sun up above three hours; the inhabitants of London choosing voluntarily to live much by candle light, and sleep by sunlight, and yet often complain, a little absurdly, of the duty on candles and the high price of tallow."

This practical idea has received legislative recognition after a lapse of 150 years, and then only under the pressure of military necessity. It is evident that men cannot and will not individually alter their habits of rising and going to bed, but collectively they can do so without inconvenience. Only Federal legislation can compel universal recognition of the change of time and a general acceptance of the new habits and customs which it imposes.

The Daylight-Saving Act seeks to cover any legal questions that may arise by providing that standard time is to govern common carriers, government officers, the courts, and persons subject to the jurisdiction of the United States in their acts and legal relations.

Whether standard or solar time should be the criterion in determining questions dependent upon time has been considered by the courts in several cases. The hour for closing saloons, it was held in the Utah case of Salt Lake City v. Robinson, 39 Utah, 260, 116 Pac. 442, Ann. Cas. 1913E, 61, 35 L.R.A.(N.S.) 610, must be determined by standard and not by solar time, where there is considerable difference between them, and the general business of the municipality is conducted by standard time. This case seems to be in accordance with reason, in holding that the standard of time generally used by the citizens of a locality is that which is ordinarily supposed to be intended unless another standard is definitely referred to.

Similarly in the Kentucky case of Rochester German Ins. Co. v. Peaslee-Gaulbert Co. 120 Ky. 752, 87 S. W. 1115, 89 S. W. 3, 9 Ann. Cas. 324, 1 L.R.A. (N.S.) 364, it is held that the word "noon," used to denote the beginning and termination of a risk under an insurance policy, will be interpreted by standard and not by sun time, where the use of the former system of reckoning time has been the prevailing custom in the community for a long period.

There are cases, however, which deny that the hour fixed by statute can be changed from sun time to standard time by any local custom. In several instances the question as to the meaning of contracts stipulating for a certain time has been left to the jury.

The standard times adopted by the railroads in 1883 were soon adopted by the people,—in some parts of the country sooner than in others,—and have long since become the sole standards of time throughout the United States. Uniform variation of this time during a part of the year to aid the nation in its present exigency will result in slight inconvenience. In fact, ordinary "local time" which is regulated by a fictitious "mean sun" is itself an artificial thing. Actual solar time is practically out of the question as an exact regulator of the ordinary business affairs of life.

Among the New Decisions

The law is the last result of human wisdom acting upon human experience for the benefit of the public.—Johnson.

Automobiles — intrusting to minor child — negligence. A parent is held not liable in the Virginia case of Blair v. Broadwater, 93 S. E. 632, L.R.A. 1918A, 1011, for injuries caused by the operation of his automobile by his minor child, to whose care he had intrusted it, on the theory that he was negligent in intrusting a dangerous machine to the hands of his child.

Bankruptcy — dissolution of corporation — lessee — claim for breach of contract. The voluntary dissolution prior to the commencement of the term of a corporation which had contracted a lease for a term of years, followed by repudiation of the lease by its receiver and subsequently by the trustee in bankruptcy, is held in Re Mullings Clothing Co. 151 C. C. A. 134, 238 Fed. 58, L.R.A. 1918A, 539, to give the lessor a claim for anticipated breach which may be presented in bankruptcy proceedings subsequently instituted against the corporation.

This decision to the effect that damages for anticipatory breach of contract constitute a claim provable in the bankruptcy proceedings is in accord with the holding of the United States Supreme Court in Central Trust Co. v. Chicago Auditorium Asso. L.R.A.1917B, 580. that such damages are "founded upon a contract either express or implied," within the meaning of § 63a–4 of the Federal Bankruptcy Act of 1898. It may now be regarded as conclusively settled, the ruling having been by the court of last resort, that damages for anticipatory breach of contract constitute a provable claim.

Carrier — conversion of property — effect on limitation of liability. The conversion by an interstate carrier of goods delivered to it for transportation, by turning them over to another carrier without authority, is held in the Iowa case of Richter & Sons v. American Exp. Co. 164 N. W. 228, annotated in L.R.A. 1918A, 749, not to change the liability fixed by its contract approved by the Interstate Commerce Commission, imposing a value limit on the property unless an extra freight charge is paid.

This holding is based upon the United States Supreme Court case of Georgia, F. & A. R. Co. v. Blish Mill. Co. 241 U. S. 190, 60 L. ed. 948, 36 Sup. Ct. Rep. 541, which held that the fact that the carrier had converted the goods did not preclude it from insisting upon a stipulation providing for a written notice of loss within a certain time, because the parties could not waive the contract under which the shipment was made pursuant to the Federal act, nor could the effect of the stipulation be escaped by bringing the action in trover.

Carrier — failure to light car — robbery — proximate cause. The negligence of a railroad company in permitting a passenger coach to be without light, and overcrowded, is not the proximate cause of an assault upon and robbery of a passenger by a fellow-passenger, and the carrier is therefore held not liable for the loss thereby caused in the

North Carolina case of Chancey v. Norfolk & W. R. Co. 93 S. E. 834, annotated in L.R.A.1918A, 1070.

Carrier — limitation in use of ticket — date of sale. A provision on a railroad ticket requiring passage to begin on date of sale is held valid in the Virginia case of Louisville & N. R. Co. v. Rieley, 93 S. E. 574, annotated in L.R.A.1918A, 775, although not known to the purchaser until after the ticket is delivered to him, and the carrier is therefore not liable for ejecting from the train one who attempts to use it on a later date.

Carrier — mental suffering of passenger — liability. That a carrier is liable to a passenger for mental suffering inflicted by insult of its conductor, although there is no physical injury, is held in the South Carolina case of Lipman v. Atlantic Coast Line R. Co. 93 S. E. 714, annotated in L.R.A.1918A, 596.

Carrier — passenger's assistant — duty. In the absence of any regulation forbidding persons to enter trains to assist a passenger, one who goes upon a train for that purpose is held in the Kansas case of Cannon v. Atchison, T. & S. F. R. Co. 167 Pac. 1050, L.R.A.1918A, 559, to have an implied permission or license so to do, and the carrier owes him the duty of ordinary care for his protection where it has notice of his purpose and intention in entering the train.

Carrier — rebate in rates — stimulating business. That a carrier cannot under the Interstate Commerce Act give a rebate on materials hauled to build a mill, although it will result in the establishment of a town and increase the railroad's business by furnishing mill products and passengers for transportation, is held in Foster Lumber Co. v. Atchison, T. & S. F. R. Co. 270 Mo. 629, 194 S. W. 281, L.R.A.1918A, 768.

It appears to be a general rule that a prospective increase in a carrier's business will not justify a discrimination as to rates in favor of a shipper from whom the increased business is expected.

A search has not disclosed any case, other than the preceding one, in which a discrimination rate for materials for the construction of a manufacturing plant is sought to be justified upon the ground of prospective receipt of the business of transporting its product.

Carrier — uniform live-stock contract — release of liability — validity. A caretaker in charge of a carload of live stock shipped under the uniform live-stock contract, which requires his presence on the train without charge other than that paid for the transportation of the live stock, is held to be a passenger for hire in Tripp v. Michigan C. R. Co. 151 C. C. A. 385, 238 Fed. 449, L.R.A.1918A, 758, although the classification on file states that he will be carried free, and a provision releasing the carrier from all liability for injury to him is therefore void.

Charities — failure of devise — cy pres. When a charitable devise of real estate to provide a home for persons of a specified class fails because of inadequacy of the property or income to carry out the testator's intention, the property, it is held in the Maine case of Gilman v. Burnett, 102 Atl. 108, L.R.A.1918A, 794, passes to the heirs of testator and cannot be administered under the cy pres doctrine.

Constitutional law — liability of automobile owner for act of bailee. That the police power extends to making the owner of an automobile liable for injury caused through the use of the car by anyone to whom he has lent it is held in the Michigan case of Stapleton v. Independent Brewing Co. 164 N. W. 520, which is accompanied in L.R.A. 1918A, 916, by a note on the validity of a statute making the owner liable for injuries by an automobile being used by another.

Corporation — personal liability of manager. One who as manager of a corporation contracted debts in excess of the limit prescribed by the charter, in consequence whereof it became necessary to dispose of the corporation's merchandise at an assignee's sale and at a loss, is held liable in damages, in the Minnesota case of Fergus Falls Woolen

Mills Co. v. Boyum, 162 N. W. 516, which is accompanied in L.R.A.1918A, 919, by a note as to the liability of executive officers or employees of a corporation for exceeding its powers.

Corporation — rights of creditor stockholder. In the distribution of the assets of an insolvent corporation it is held in La Salle Street Trust & Sav. Bank v. Topeka Mill. Co. 101 Kan. 446, 167 Pac. 1036, L.R.A.1918A, 574, that the fact that a stockholder is also a creditor is immaterial, for he stands on the same ground as, and is entitled to claim equally with, other creditors, at least where he has satisfied his statutory obligations as a stockholder.

Criminal law — former jeopardy — conspiracy to steal. Where the accused has engaged with another in a criminal conspiracy or plan having for its purpose the larceny of specific automobiles belonging to separate owners, and in pursuance of such plan the confederate steals such automobiles at divers times and places, each theft is held in the Ohio case of Patterson v. State, 117 N. E. 169, annotated in L.R.A. 1918A, 583, to constitute a distinct and separate offense, and an acquittal of one does not place him twice in jeopardy on the trial of the other.

Crops — right of tenant in possession. That a tenant of one claiming title to real estate is entitled, as against the true owner, to crops which he makes and harvests while in possession, is held in Bethea v. Jeffres, 126 Ark. 194, 189 S. W. 666, annotated in L.R.A.1918A, 549.

Damages — property injured by exercise of eminent domain — common benefits. In determining the damages to be awarded for injuries to abutting property by the construction of an elevated railroad in a street, under a constitutional provision requiring compensation to be made in case property is damaged by public use, the enhanced value of the property because of the improvement, it is held in Brand v. Union Elev. R. Co. 258 Ill. 133, 101 N. E. 247, annotated in L.R.A.1918A, 878, is to be taken into consideration, notwithstanding it is shared by all property located along the route of the railway.

In this case, the court adheres to the rule that special benefits do not become general benefits because they are common to other property in the vicinity, following Peoria, B. & C. Traction Co. v. Vance (1907) 225 Ill. 270, 80 N. E. 134, annotated in 9 L.R.A.(N.S.) 781, which was affirmed on writ of error by the United States Supreme Court in (1915) 238 U. S. 586, 59 L. ed. 1471, 35 Sup. Ct. Rep. 846, four justices dissenting on the ground that the effect of the judgment was to permit the plaintiffs to be paid for valuable property rights in general benefits that the owner received in common with the public, and that therefore his property was taken without due process of law.

Brand v. Union Elev. R. Co. was followed in Geohegan v. Union Elev. R. Co. (1915) 266 Ill. 482, 107 N. E. 786, Ann. Cas. 1916B, 762; also in Sanitary Dist. v. Boening (1915) 267 Ill. 118, 107 N. E. 810, where part of the property was taken.

Similarly, in Stocker v. Nemaha Valley Drainage Dist. (1915) 99 Neb. 38, 154 N. W. 862, where part of the land was taken for a drainage ditch, it was held that, "if the property not taken is enhanced in value by reason of the construction of the ditch, such increase in value is a special benefit as to the particular property, and not a general benefit, notwithstanding the value of other property within the drainage district is also enhanced by reason of the improvement."

See also Nelson v. Atlanta (1912) 138 Ga. 252, 75 S. E. 245, where the court said: "While it has been sometimes broadly stated that the benefit to the particular property must be special, in contradistinction to general benefits shared by it in common with the generality of property, it is a misconception of the principle to eliminate a consideration of any special benefit to the particular property because other property in the vicinity may also be specially benefited."

Death — presumption from absence — attempt to locate. That no attempt to locate the absentee is necessary to raise a presumption of death from absence for seven years in case a youth leaves home without giving any intimation of his destination, and is not heard of for more than seven years, is held in the Pennsylvania case of Malay v. Pennsylvania R. Co. 101 Atl. 911, L.R.A.1918A, 563.

Deed — reservation — minerals. That oil and gas are minerals within the meaning of a reservation by deed of "all mineral rights" upon the land described in the deed is held in the Oklahoma case

of Barber v. Campbell-Ratcliff Land Co. 167 Pac. 468, annotated in L.R.A.1918A, 487.

Easement — right of way — right to bridge stream. A grant of a right of way which is crossed by a stream is held to include the right to bridge the stream if necessary to a convenient use of the way in the Pennsylvania case of Hammond v. Hammond, 101 Atl. 855, annotated in L.R.A.1918A, 590.

Fraud — misrepresentation of law — liability on note. A woman, it is held in Wicks v. Metcalf, 83 Or. 687, 163 Pac. 434, 988, annotated in L.R.A.1918A, 493, cannot avoid liability on a note which she signed with her husband because she was told that her signature was necessary to validate a mortgage executed to secure the note and would impose no personal obligation upon her, since the representation is one of law.

The general rule therein stated, to the effect that where the instrument speaks the true agreement between the parties equity will not grant relief because one or both of them may have been mistaken as to its legal consequences, as applied to the facts in the Wicks Case, leads to an apparently inequitable result, and the correctness of the decision in that case is at least doubtful.

It seems that a contrary result might well have been been reached in Wicks v. Metcalf on the ground that the facts alleged showed more than a mere mistake as to the legal effect of the note signed by the wife, a mistake affecting and entering into the nature of the contract itself. In other words, that the contract which the payee claimed had been executed was not the real contract, and that the false representations of the payee prevented that meeting of the minds or mutuality which is essential to every contract.

Game — protection — liability of warden. A game warden, it is held in the Vermont case of Villa v. Thayer, 101 Atl. 1009, annotated in L.R.A.1918A, 837, is, in the absence of a statute expressly authorizing his act, liable in damages for shooting a dog for the protection of a wild deer which it is chasing, although he adopts the only means available for the protection of the deer.

The only decision which might seem to be at variance with the holding in this case is James v. Wood (1889) 82 Me. 173, 8 L.R.A. 448, 19 Atl. 160, in which it was held that a game warden was not liable to plaintiff for releasing a moose which plaintiff had captured during the closed season and was retaining in captivity, the court saying that the warden's act was meritorious and was in aid of the purpose of the statute protecting moose, and that while his authority gave him no especial protection, his duty as an officer called him to interfere and prevent a continued violation of the statute. However, in the latter case it was not necessary for the defendant to destroy any property of plaintiff in releasing the moose, as plaintiff acquired no property in the animal by reducing it to his possession illegally.

Gas — failure to cut off — negligence. Failure of a gas company, on discontinuance of the use of its gas by a patron, to cut off at the street valve, so as to exclude it from the service pipe, and its cutting it off at the meter valve, so as to leave it stored in the service pipe up to the meter valve, is held in the West Virginia case of Canfield v. West Virginia Central Gas Co. 93 S. E. 815, L.R.A.1918A, 808, not to constitute negligence per se.

Husband and wife — alienation of affections — liability of husband of responsible person. That a man cannot be held liable to a woman for the alienation of her husband's affections by his wife, merely because he knew of and approved her conduct, is held in the Missouri case of Claxton v. Pool, 197 S. W. 349, annotated in L.R.A.1918A, 512, which further determines that a man is not, since the passage of the Married Woman's Act, responsible for the tort of his wife in alienating the affections of another woman's husband.

Injunction — to prevent shutting off water supply. An injunction, it is held in the Maryland case of Carter v. Suburban Water Co. 101 Atl. 771, L.R.A. 1918A, 764, will lie to prevent a water company from shutting off the supply of a consumer to coerce payment of a disputed bill.

Insurance — interest — house on another's land. Relying upon the rule that one who will suffer a pecuniary loss by the destruction of property has an insurable interest therein, the conclusion

was reached in the West Virginia case of Hawkins v. Southwestern Mut. F. Ins. Co. 93 S. E. 873, annotated in L.R.A. 1918A, 789, that a married woman who with her own funds constructs a house upon a lot belonging to her husband, under an agreement that he will convey such lot to her in the event she builds a house thereon, has an insurable interest therein.

Intoxicating liquors — forbidding possession — property rights. That no constitutional rights of liberty or property are impaired by forbidding the possession of intoxicating liquors in prohibition territory is held in Re Crane, 27 Idaho, 671, 151 Pac. 1006, L.R.A.1918A, 942.

There has been a difference of opinion as to the power of the state to prohibit the keeping of intoxicating liquor irrespective of any intention to sell it in violation of law. The power is sustained in Re Crane. Upon appeal to the United States Supreme Court, that court, in Crane v. Campbell (decided Dec. 10, 1917, U. S. Adv. Ops. 1917, p. 95) 245 U. S. —, 62 L. ed. —, 38 Sup. Ct. Rep. 98, sustained the decision in Re Crane, holding that the Idaho statute, in so far as it undertakes to render criminal the mere possession of intoxicating liquor for personal use, does not conflict with that portion of the 14th Amendment which declares that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law."

Landlord and tenant — injury by running water — liability. The owner of a building is held not liable in the Maine case of Leavitt v. Williams, 102 Atl. 39, L.R.A.1918A, 610, for injury to goods of a tenant of the first floor by water flowing from a properly constructed sink on the floor above, the vent of which is adequate to care for all water which can be delivered by the faucet, because of the negligence of some unknown person in clogging the vent and leaving the water running.

Larceny — taking fish from pound. Taking fish without license from another's pound in the ocean is held to be larceny in Miller v. United States, 242 Fed. 907, annotated in L.R.A.1918A, 545, if they were not likely to escape from the pound and resume their natural liberty, although it was possible for them to do so.

A like conclusion was reached in State v. Shaw (1902) 67 Ohio St. 157, 60 L.R.A. 480, 65 N. E. 875, 14 Am. Crim. Rep. 405, in which it was decided that the owners of nets acquired a property in fish confined in them, so that the taking of the fish from the nets was larceny, where, although escape was not absolutely impossible, it was practically so, and the defendants raised the nets with absolute assurance that they could get the fish.

Limitation of action — promise to pay debt — effect. A mere promise to pay a debt when able is held not sufficient to toll the Statute of Limitations in the Pennsylvania case of Re Maniatakis, 101 Atl. 920, annotated in L.R.A.1918A, 900.

The great weight of authority supports the rule that a promise by a debtor to pay his debt "as soon as he can," "when able," or "when in his power," etc., is a conditional promise, and where relied upon either to take a previously existing debt out of the Statute of Limitations or as an original promise, it is incumbent upon the creditor to show that the condition has been fulfilled,—in other words, that the debtor is able to pay.

This rule is supported by the following cases, the promises relied upon being parenthetically expressed: Gill v. Gibson (1916) 225 Mass. 226, 114 N. E. 198 (as soon as things start up I may be able to do something for you); Koop v. Cook (1913) 67 Or. 93, 135 Pac. 317 (if sickness in debtor's family doesn't continue too long, so as to clean him all up); Eyre v. McFarlane (1910) 19 Manitoba L. R. 645 (as soon as he could get the money).

Malicious prosecution — inference of malice. That malice may not be found merely from want of probable cause in an action for malicious prosecution is held in the Arizona case of Griswold v. Horne, 165 Pac. 318, annotated in L.R.A. 1918A, 862.

Malice and want of probable cause are both essential and distinct ingredients of a cause of action in malicious prosecution. The doctrine that malice may be inferred from a want of probable cause does not mean that the inference is necessary, but that it is permissible. In the foregoing case the court condemns an instruction that permitted the inference, and considers that the doctrine above mentioned is not of universal application.

There are, indeed, cases where instructions have been given to the effect that from the

want of probable cause the law infers malice. (Thus in Wells v. Parsons (1842) 3 Harr. (Del.) 505, the court charged the jury that "if it be shown that there was a want of any probable cause, the law implies malice from that circumstance." The same instruction was given on this authority in Herbener v. Crossan (1902) 4 Penn. (Del.) 38, 55 Atl. 223. In Long v. Rodgers (1851) 19 Ala. 321, the court approved an instruction to the effect that neither should the defendant be acquitted although he acted entirely without malice, if no probable cause in fact existed, and he failed to use such precaution as a prudent man would use to ascertain that fact, but that in such case malice would be inferred from the want of probable cause.) But the weight of opinion does not support this extreme view.

Master and servant — injury by automobile driven by wife — liability of husband. One who maintains an automobile for the pleasure of himself and his wife, who has general permission to use it as she desires, is held liable in the Colorado case of Hutchins v. Haffner, 167 Pac. 966, L.R.A.1918A, 1008, for injury negligently inflicted by her while driving the car for her own pleasure since she is his agent in carrying out the purpose for which the car was purchased.

Master and servant — wetting with hose — liability of master. A coal company is held not liable in Leslie v. Consolidation Coal Co. 172 Ky. 121, 188 S. W. 1083, L.R.A.1918A, 1051, for the act of its employee in wetting a passer-by with water from a hose when without directions from the company he undertakes on a hot and sultry day to sprinkle the street near a store belonging to the company, with water from a hose provided by the company for general fire protection in the town, in order to lay the dust and cool the air.

Monopoly — selling losing business to rival. That a concern selling plates and ready-print service to newspapers may sell its plant to a business rival without violation of the Sherman Anti-Trust Act, when industrial conditions have forced it to close its business, where the only alternative is to scrap the plant, is held in American Press Asso. v. United States, 245 Fed. 91, L.R.A.1918A, 1039.

Mortgage — laches — effect. Failure of one who purchases real property subject to a mortgage promptly to repudiate it, upon discovering an agreement to pay the mortgage which was inserted in the deed by mistake, is held not to raise an obligation to pay it in favor of the mortgagee in the Colorado case of Lloyd v. Lowe, 165 Pac. 609, annotated in L.R.A.1918A, 999.

Nuisance — morgue. The opening of a morgue and undertaking establishment in a residence district, to the depreciation of the value of neighboring property, it is held in the Michigan case of Saier v. Joy, 164 N. W. 507, annotated in L.R.A. 1918A, 825, may be enjoined as a nuisance.

Office — appointment — certification of names — right to office. A novel question was presented in the Washington case of Jenkins v. Gronen, 167 Pac. 916, L.R.A.1918A, 839, which holds that under a charter and ordinances requiring the certification from the eligible list of three names for the office to be filled, and providing that the vacancy shall be filled from the persons certified, who shall appear before the appointing officer for inspection, if one only of the three certified appears he is entitled to the appointment, and the appointing officer cannot require the certification of additional names.

Parent and child — second adoption — right to inherit under first. That the approval by the court of a second adoption of a child revokes the first adoption, and destroys all rights of inheritance which the child acquired under it, is held in the Michigan case of Re Klapp, 164 N. W. 381, L.R.A.1918A, 818.

This decision is directly opposed to the earlier case of Villier v. Watson, 168 Ky. 631, 182 S. W. 869, annotated in L.R.A.1918A, 820, which holds that a judgment declaring a child who has been decreed, in accordance with the statute, to be the heir of a stranger, and capable of inheriting from him as though he were his own child, to be the heir at law of his grandfather, and transferring his custody from the former to the latter without attempting to annul or set aside the former decree, does not affect its right to inherit under the first adoption even though the judgment

was entered on petition of the parties to the first proceeding.

The court in Re Klapp refused to adopt the reasoning followed in the Villier Case that, since an adopted child may inherit from his natural parent, by analogy it should be held that the child after being adopted a second time, and while living with his second adoptive parent, may inherit from the first. The position of the dissenting judge in Re Klapp is that the child, whose interests are always paramount, was in no sense a party to what he calls the contract of adoption; and that as a natural father cannot by his consent to its adoption deprive his offspring of its right to inherit, so it should be held that an adoptive parent who has voluntarily brought about a legal relationship may not by his subsequent consent to readoption deprive such child of its right to inherit. This is in harmony with the opinion in the Villier Case.

Partnership — power to compromise suit. A majority of the partners, it is held in the Oklahoma case of Reiser v. Johnston, 166 Pac. 723, may compromise a suit against the partnership in good faith, after notice to all the partners, by disposing in said compromise of all the assets belonging to the partnership, the subject-matter of the litigation, and thus bind all the partners to the partnership by such action.

The right of a partner or of a majority of the partners to sell all or substantially all of the firm assets is treated in the note appended to the foregoing decision in L.R.A.1918A, 924.

Pension — teachers' — power of legislature. The establishment of a state teachers' pension fund is held to be a public purpose and enterprise, and within the power of the state legislature, in State ex rel. Haig v. Hauge, 37 N. D. —, 164 N. W. 289, annotated in L.R.A. 1918A, 522.

Principal and agent — unauthorized borrowing — ratification. If a principal, after he has knowledge that money used in his business was loaned to his agent upon a promissory note to which the agent, without authority, had signed the principal's name, retains the money obtained by means of said note, he thereby ratifies the unauthorized act of the agent, and is held liable to the lender upon the note, in the Oklahoma case of Antrim Lumber Co. v. Oklahoma State Bank, 162 Pac. 723, L.R.A.1918A, 528.

Principal and surety — completing building contract — superiority over attaching creditors. The right of the surety on a contractor's bond who is entitled under the contract to complete the work upon the contractor's default and be subrogated to all the rights and properties of the principal arising out of the contract is held in Illinois Surety Co. v. Mitchell, 177 Ky. 367, 197 S. W. 844, annotated in L.R.A. 1918A, 931, in case he takes possession and completes the contract, to be superior to that of attaching creditors of the contractor to the percentage of the contract price retained by the owner as the work progressed, to secure compliance with the contract.

Where the surety for the completion of a contract completes the same after it has been abandoned by his principal, he has a special equity in the amount unpaid thereunder if the cost of completing the contract equals or exceeds such amount, and as to an assignee claiming under an assignment of the claim by the principal, the right of sureties to such unpaid amount is paramount. And this includes not only the amount unpaid on the contract, but the amount earned by the principal and retained by the other party to the contract. Title Guaranty & S. Co. v. Dutcher, 203 Fed. 169; Duncan v. Guillet, — Colo. —, 161 Pac. 299; Fidelity & D. Co. v. Northwestern Nat. Bank, 90 Wash. 179, 155 Pac. 743 (amount unearned). This rule was applied in the foregoing decision as against attaching creditors of the principal, the surety taking precedence over them. This is also the rule as to general creditors. Southern R. Co. v. Bretz, 181 Ind. 504, 104 N. E. 19. And also as to materialmen who claim a lien on the amount reserved, where the contract is completed at a loss to the sureties. Hackensack Brick Co. v. Bogota, 86 N. J. Eq. 143, 97 Atl. 725 (applying rule to indemnitor of surety); Union Stone Co. v. Hudson County, 71 N. J. Eq. 657, 65 Atl. 466.

Railroad — fire set out by independent contractor — liability. A standard-built railroad operating under a quasi public franchise, it is held in the North Carolina case of Bryant v. Sampson Lumber Co. 93 S. E. 926, cannot without express legislative sanction contract or lease its road to an independent contractor so as to relieve itself from liability for fires negligently set out in the operation of the road.

Supplemental annotation as to the liability of a railroad for fires set out by engines of another company permitted to use its road is appended to the foregoing decision in L.R.A.1918A, 938.

This case is in accord with the other authorities on the question of the liability of a railroad for fires set out by an engine of another company permitted to use its road.

The earlier authorities are unanimous upon the proposition that a railroad company which permits its road to be used by another is liable for loss by fire caused by the defective condition of its licensee's engines.

Railroad — injury to fireman. A railroad company negligently setting a fire is held in the New Hampshire case of Clark v. Boston & M. R. Co. 101 Atl. 795, L.R.A.1918A, 518, to owe no duty to one employed by a municipal corporation to extinguish it which will render it liable for injury to him while attempting to perform such service.

Judge Peaslee, in delivering the opinion of the court, observed: Neither the plaintiff nor his property was in a position to be injured by a fire set by the defendant. His connection with the fire arose solely from his own act in coming into contact with it after it was set.

It is the law of this state that, as to such interveners, the defendant who created the situation owed no anticipatory duty.

As to the intervener, the defendant's previous conduct is wrong only in the sense that it is a wrong to society at large. It may be a moral wrong and may be punishable on behalf of the public; but it is not a private legal wrong to individual members of the public, who, of their own motion, undertake to lessen the evil effects of the defendant's dereliction from duty. The Good Samaritan could not recover from the thieves the value of the oil and wine which he poured into the wounds of the man at Jericho. His recompense is the same to-day that it always has been.

Sale — delivery — time. A contract to deliver goods in reasonable instalment deliveries, as required by the buyer, is held not void in Frankfurt-Barnett Co. v. William Prym Co. 150 C. C. A. 223, 237 Fed. 21, annotated in L.R.A.1918A, 602, for failure to designate the time of delivery, since the deliveries must be made within a reasonable time.

Specific performance — in favor of infant — performance of consideration. That an infant who has performed his obligation under a contract to pay the expenses of another at a hospital and support him during life, for which he is to receive a conveyance of land, may enforce such conveyance, is held in the Virginia case of Asberry v. Mitchell, 93 S. E. 638, annotated in L.R.A.1918A, 785.

It has been held in Great Britain that an infant cannot maintain a bill for the specific performance of a contract made by him (Flight v. Bolland (1828) 4 Russ. Ch. 298, 38 Eng. Reprint, 817, 28 Revised Rep. 101, 6 Eng. Rul. Cas. 693); but after he has become of age and affirmed the contract, he may then enforce it in equity (Clayton v. Ashdown, as cited in 9 Vin. Abr. 393, pl. 1).

American decisions either expressly supporting Flight v. Bolland, or expressly repudiating it, are not to be found. In Ten Eyck v. Manning (1893) 52 N. J. Eq. 47, 27 Atl. 900, and in Tarr v. Scott (1867) 4 Brewst. (Pa.) 49, the Flight Case is cited with approval, although the facts did not render such citation and approval necessary to a decision. But in some closely analogous cases there have been holdings based upon the theory that no adult can take advantage of the fact that the other contracting party is an infant. Smith v. Smith (1867) 36 Ga. 184, 91 Am. Dec. 761 (contract made by infant's trustee); Sarter v. Gordon (1835) 2 Hill, Eq. 121 (where contract was made by an adult for infants); Lafollett v. Kyle (1875) 51 Ind. 446 (see statement of this case, infra). And there can be no doubt that the American courts would hold that if the minor complainant has fulfilled his part of the contract, he can maintain the suit for specific performance.

Tax — inheritance — sum expended for tombstone. The expenditure by an executor, with the approval of the probate court, of a reasonable sum to provide a suitable tombstone upon the grave of the deceased, is an expense of administration of the estate, and the amount so expended is held in the Minnesota case of State ex rel. Smith v. Probate Ct. 164 N. W. 365, L.R.A.1918A, 766, not subject to an inheritance tax under Minn. Gen. Stat. 1913, § 2271, imposing a tax upon "any transfer of property . . . when the transfer is by will.

The expenditure in this case of $7,000, out of an estate of $58,000, for a tombstone, can hardly be designated as a "moderate" one, although the court regards it as "reasonable." Of interest in this connection is the holding in Morrow v. Durant (1908) 140 Iowa, 437, 23 L.R.A.(N.S.) 474, 118 N. W. 781, 17 Ann. Cas. 850, to the effect that, in the absence of fraud or collusion, the state cannot question

the reasonableness of the amount set apart by the testator for a tomb for himself.

Telegram — local message — sending through other states — effect. A telegraph message between two points in the same state, it is held in the North Carolina case of Bateman v. Western U. Teleg. Co. 93 S. E. 467, becomes interstate, so that the question of damages for mental anguish is governed by the Federal, and not by the state, law, if it is sent through an office in another state, if such course was adopted in good faith, and not to circumvent the local law. This case is accompanied by supplemental annotation in L.R.A.1918A, 803.

Theaters — approval of film by censors — effect. Approval of a moving picture film by the advisory committee appointed by the city to censor such films to aid in preventing violation of the ordinance is held in the Washington case of Seattle v. Smythe, 166 Pac. 1150, annotated in L.R.A.1918A, 228, to be no defense to a prosecution for displaying it to the public, under an ordinance making it unlawful to exhibit films of a specified character.

Theaters — care due in giving show in tent. One giving a show in a tent to which the public are invited is held bound in the Michigan case of Jacobs v. Hagenback-Wallace Shows, 164 N. W. 548, L.R.A.1918A, 504, to anticipate the usual ordinary storms of the season and latitude and to use ordinary care in the selection and erection of the tent, but is not required to provide against unusual or extraordinary storms.

Will — destruction — dependent relative revocation. The destruction of a will upon execution of a later one, it is held in Thompson's Appeal, 114 Me. 338, 96 Atl. 238, annotated in L.R.A.1918A, 911, may be deemed to have been made on condition that the later one was valid, and in case it is not the former may be given effect.

It is a rule well established that if the cancelation or mutilation of a will by the testator takes place in connection with the making of a second will, and under such circumstances as to indicate that the revocation was dependent upon the dispositions in the second will being given effect, the mutilation or cancelation will not be held to be a revocation where the second will proves invalid. A will from which the testator tore his signature with the intention of revoking it, under the belief that he had made a subsequent valid will, was admitted to probate in Miller v. Miller (1898) 34 Can. L. J. 743, where the subsequent will failed because it had only one witness.

In Irvin's Estate (1908) 25 Times L. R. 41, a will which had been destroyed in the belief that a subsequent document was a valid will was admitted to probate where the subsequent will proved in fact invalid, the signature of the testator not being attested, on an application for probate of the will consented to by each of the next of kin, who were all sui juris.

But where the intention of the testator was to revoke the will, independently of the validity of the subsequent will, such intention will be given effect although the subsequent will proves to be invalid. Re Drury (1882) 22 N. B. 318.

Recent English and Canadian Decisions

[Note.—The more important of these decisions will be reported, with full annotations, in British Ruling Cases.]

Assignment of chose in action — promise to apply proceeds on debt. An oral agreement by a debtor that he will apply the amount realized upon a disputed claim against a third person in reduction of his debt, of which agreement notice is given to the third person, is held in Morrison v. McPherson, 28 Manitoba L. R. 113, 36 D. L. R. 550, to constitute a good equitable assignment of such claim as against a subsequent assignment in writing to another.

Bills of exchange — acceptance by drawee — presentment and payment rendered impossible by war — liability of drawer to discounting bank. A point of considerable interest to bankers and business men recently decided by an English court is that a drawer who has

discounted acceptances of firms in Germany and Austria, some of which were payable before and others after the outbreak of war, the payment of which, by legislation in those countries, could not be enforced during the war, cannot be held liable thereon to the banks discounting them, inasmuch as, by the law of the place where such bills were payable, the due date of payment had not yet arrived. It was intimated, however, that the bank might claim to have the contract rescinded, as in the case of a forged bill, in which case, however, a different measure of liability would arise. Re Francke, 34 Times L. R. 287.

Landlord and tenant — freezing of water pipes — injury to premises — liability. A tenant who knows that damage from frost is likely to occur if precaution is not taken to prevent water pipes from freezing, and who has failed to take reasonable precaution to that end, but, on the contrary, did that which increased the danger and led to the freezing of the water and consequent injury to the demised premises, is held in Conklin v. Dickson, 40 Ont. L. Rep. 460, 38 D. L. R. 692, to be liable to his landlord for the damages thus occasioned.

Negligence — proximate cause — act of boys releasing brakes on standing car. That a company whose employees in unloading cars moved them for their convenience from the place where they had been left by the railway company, and left them standing on a grade without securing them except by setting the hand brake and loosely blocking the foremost car, is liable for the consequences where some schoolboys loosened the brakes on the car furthest up hill, which, being propelled by its own gravity against the lower ones, moved all the cars, so that a collision took place at the foot of the hill between them and a passenger car,—is held by a divided court in Geall v. Dominion Creosoting Co. 55 Can. S. C. 587, 39 L. L. R. 242.

Sale of goods f. o. b. — governmental restriction on export — duty of seller to procure export license. That it is not the duty of an English seller of goods f. o. b. in England, the export of which has been restricted by governmental regulation, to use his best endeavors to procure an export license, is held in H. O. Brandt & Co. v. H. N. Morris & Co. 87 L. J. K. B. N. S. 101.

Wills — validity of bequest for propagation of Christian Science. Bequests to be used in promoting the spread of Christian Science and to encourage the building of Christian Science churches are not invalid as being contrary to public policy, according to the decision of the Ontario Appellate Division in Re Orr, 40 Ont. L. Rep. 567. It is not enough, said Chief Justice Meredith, that the views of Christian Science are opposed to what is generally accepted as true. To deny the right to propagate such views presupposes the infallibility of human judgment, and would bar the way of progress in every direction, scientific or otherwise.

Wills — construction — revocation of legacy — effect upon residuary gifts to legatees in proportion of their legacies. A bequest of a residuary estate to be divided among certain charitable institutions, to whom the testator had previously given money legacies, "in the proportion of their respective legacies," is held in Re Florence, 87 L. J. Ch. N. S. 86, not to be affected by a codicil by which the testator revoked most of such legacies and in all other respects confirmed his will.

Workmen's compensation — dependency of members of family as affected by capacity to work. A daughter who kept house for her widowed father, being provided for by him, may be awarded compensation upon his death by accident in the course of his employment, upon the basis of total dependency, although at the time of his death or during the time when she kept his house she could have supported herself. Simms v. Lilleshall Coal Co. [1917] 2 K. B. 368, 86 L. J. K. B. N. S. 965.

The world is a comedy to those who think, a tragedy to those who feel.—*Walpole.*

A Goodly Heritage. Fresh air and sunshine, fruits and flowers, peace and serenity, are bequeathed to all mankind by the terms of the will of John Fleming Pogue, former Cincinnati attorney and writer, who died in California. The will closes as follows:

"Finally I bestow upon my fellow men and all those who will receive the same from me, peace, serenity, and happiness possessed by me to the fullest extent that I am capable of giving same.

"May such use and enjoyment as I have made of these blessings but serve to increase their value, importance, and worth to others.

"Furthermore, it is my will and bequest that these inheritances shall remain in perpetual entail and descend from man to man for all time.

"I bequeath hope and trust, charity and kindness, a helping hand, a good word, a glad greeting, and a cheery smile to all mankind.

"I further declare that abiding faith in God is the only sure foundation for any joy or peace in this world or in any other,—the best evidence or expression of which is our faith in one another.

"Done in the presence of God and my soul this twenty-eighth day of August, A. D. 1911. John Fleming Pogue."

Wide Latitude. "It is evident this case is not in point by a thousand miles," comments Chief Justice McBride in case of State ex rel. Withycombe v. Stannard, 84 Or. 450, 165 Pac. 566, 571, L.R.A.1917F, 215.

Averment of Absolutism. In King of Prussia v. Kuepper, 22 Mo. 550, 66 Am. Dec. 639, the right of the King of Prussia to maintain an action against an embezzling officer who had fled to this country was upheld. In the petition filed on behalf of King Frederick William IV. the following averment is made as to the plenitude of his royal power: "The plaintiff states that he is absolute monarch of the Kingdom of Prussia, and as King thereof is the sole government of that country; that he is unrestrained by any constitution or law; and that his will, expressed in due form, is the only law of that country, and is the only legal power there known to exist as law." This case was decided in 1856. But Prussia has steadfastly retained, in contradistinction to the South German states, its traditional character as a land ruled from above; the monarchy and the bureaucracy basing their authority not on the will of the people, but on Divine right.

Rough Sort of Chap. A traveler tells of a trip on a jaunting-car in Ireland, where he had as a fellow passenger an ugly-looking man, whom he was not sorry to leave behind at an inn.

"That was a queer-looking fellow, Pat," he remarked to the waggish driver, as he proceeded on his way.

"Faith, yer Honor, he's as quare as he looks. He's a villain. He's done fifteen years for laving his woife without visible means of support."

"Oh, get out, Pat! A man can't get fifteen years' penal servitude for leaving his wife without visible means of support."

"Shure, and can't he, sir?" said Pat, with a twinkle in his roguish eyes. "He did, though. And, bedad, isn't it laving yer woife without visible means of support when ye throw her out of a window on the third floor?"

An Ex Parte Proceeding. Two Tuskegee graduates represented, respectively, plaintiff and defendant in a municipal court the other day. The question at issue being close, the judge asked for some authorities.

The attorney for the plaintiff handed up a book. His Honor was so impressed with the citation that he observed, "This case seems to be in point." When the judge had finished, opposing counsel, much perturbed, demanded, "Misto Attorney, le' me see that book."

"No, sah!" was the retort. *"Look up yo' own law."*

Breaking the Sabbath. Bishop Paul Jones, of Utah, was asked by a committee the other day to support a rather extreme Sunday ordinance. "Gentlemen," the bishop said, "the wife of one of my ministers saw her little boy last Sunday morning chasing the hens all over the farmyard with a club. 'I'll learn you,' he was shouting, 'I'll learn you to lay eggs on the Sabbath!"—Buffalo "Commercial."

A Vigilant Caretaker. In the recent German aerial attack on Paris, one of the enemy aviators dropped a bomb which struck and damaged the embassy building of one of the Central Powers.

Two days later the caretaker of the building requested the legation of the neutral power representing the enemy's country to present a bill to the French government for the damages done to the building.

France is asked to pay $900 for destruction by the enemy of his own property.

Sparks from the Judicial Anvil. In holding that mandamus will lie to compel county officials who have declared their intention not to comply with the requirements of the law necessary to the holding of an election to take the steps necessary for that purpose, although the time has not yet arrived for the performance of any act, the court, in the case of State ex rel. Withycombe v. Stannard, 84 Or. 450, 165 Pac. 566, 571, L.R.A.1917F, 215, observed: In many of the cases cited outside of our own state "it is laid down as a general rule that mandamus will not issue to compel the performance of a duty before the time for such performance has arrived. This rule, in some form or other, has been 'parroted' down from court to court and from judge to judge, without any particular reason being given for it."

A Grateful Serpent. A group of soldiers were telling stories round the table of a Y. M. C. A. hut. The turn of a colonial came round.

"I have at home," he said, "a pet rattlesnake. I saved its life once and it seems to realize it. One night I was awakened by my wife, who had heard a noise downstairs. I gripped my revolver and stole down. I heard a struggle going on in the dining room. Imagine my surprise when, in the dim light from the street, I saw my rattlesnake with its body tightly wound round a burglar and its tail sticking out of the window rattling for a policeman!"—Chicago News.

Warned against the Movies. In charging a jury sworn in a murder case at Macon, Missouri, during the January term, Judge V. L. Drain told the twelve triors it would be highly improper for them to attend any of the local moving picture shows while the trial was in progress.

This striking tribute to the power of the pictured play was called out by an incident that occurred at Randolph county, Missouri, not long ago. One night while the case of the state against one Scobelle was on trial, the charge being murder, the bailiff in charge of the jury permitted them to while a tedious hour away one evening by attending a local picture show.

Scobelle was found guilty of murdering his companion in a box car, and his punishment assessed at ten years in the penitentiary. In his motion for a new trial defendant's counsel cited as ground of error that the jury had attended the

movies and seen there a play almost identical with the one they were trying, and it had so inflamed their minds against the defendant that they brought in a verdict of guilty. The court held the motion good, and ordered a new trial for the accused.

In discussing his caution to the jury in the Macon case Judge Drain said:

"That was not intended as a criticism of moving picture shows. I go to them myself and enjoy them, and I enjoy them because of their strong appeal. The scenes enacted are so real that one carries away with him an impression that is lasting. And for that very reason it is improper for a jury in a murder trial to go to such shows. If a movie show were an inconsequential thing it would not matter. But it is real, almost as real as life itself. It inspires all the emotions, love and laughter, anger and hatred, joy and sorrow. It is no safe place for a juryman on duty."

Legal Diplomacy. The decision in the "Archie" case, made at an early day by the California supreme court, was not so much an instance of "judge-made law" as of judicial evasion of the consequences of a law. A young gentleman from Alabama, who was either ignorant of the law or defiant of it, brought with him to California a mulatto man named Archie, who was his slave and body servant. After a while the slaveholder determined to return to his former home and to take the mulatto boy with him, Archie demurred, and a writ of habeas corpus was sued out to determine his legal status. The court held that the young Southerner, having voluntarily brought Archie into a free state, the fugitive slave law did not apply, and the mulatto was entitled to his freedom. But, as the young man was sick and needed his servant, the latter was remanded to the custody of his master. This decision was characterized at the time as a statesmanlike compromise.

A Long Breath. An American who visited Laos furnished a description of a curious legal ceremony that he was fortunate enough to witness. Two Phyas —Phya is an official title in that part of the world—both claimed the ownership of a number of slaves. The judges before whom the case was brought were unable to agree upon a verdict, and granted the parties a trial by water; that is to say, the disputants were to dive into the river, and whoever remained under water the longest would be adjudged the owner of the slaves.

On the day appointed for the "hearing," the people turned out in force; both banks of the stream were lined with thousands of spectators. There was no pushing or apparent excitement, but everyone seemed to take a deep interest in the proceedings, an interest which was increased by frequent giving and taking of "the odds." The American himself was invited to stake a few rupees, but preferred to keep himself free from partisanship.

In the thick of the leading members of the company stood the two Phyas most directly concerned in this novel trial; but as time went on and they made no sign of devesting themselves of their robes and preparing for the dive, he inquired whether they would, in sporting parlance, "dive in dress." The reply was that the diving would be done by proxy, each Phya having provided himself with a "champion," who would do his best to prove his employer in the right.

At that moment there was a stir amid the umbrellas, and the two natives came forward with an offering of flowers which they laid before the Chow and his council of Phyas, each making an oath at the same time that he firmly believed in the justice of the side that he represented.

The two men then walked into the river, each with a rope round his waist, which was held by a third man, to prevent them from being carried away by the swift current. Each bore some flowers on his head, and a string of leaves round his neck, as a sort of mute appeal to the favor of the water spirit.

Amid a breathless silence the two swarthy figures stood awaiting the word; then a splash, and they were lost to view. The American carefully timed the duration of the dive; and sixty seconds, that seemed like an age, so still was the

crowd, passed without a sign of either of them.

One minute and a half! Two minutes! Surely the swift current of the river must have carried them beyond sight of the crowd; and while they were watching the point at which the men had entered the water, vainly expecting them to emerge, they were being whirled away downstream.

A few moments later and a great shout greeted the appearance of a dark round object above the water, and the trial was over. It was the head of the losing diver, and at that he had remained under water exactly two minutes and fifteen seconds.

The man who held the ropes then gave the signal to the other man to come up; but he made no sign, and the cry ran round that he was dead.

At last, however, he emerged from the water, evidently exhausted, but with a record several seconds better than his opponent.

A general rush now took place to see if the "right man" had won,—the right man being, of course, the one on whose staying powers each individual happened to have staked his money.

The Queen in Law. Many people suppose that Queen Mary of England has unique powers in her own right, by reason of her being consort of the occupant of the throne. This, however, is quite an erroneous idea; for, although she has many privileges, she is in reality the King's subject and is amenable to the nation's laws.

Only since the reign of Mary Tudor has the consort been given any privileges at all. At that time an act of Parliament was passed which rendered anyone plotting against Philip of Spain guilty of high treason. Therefore, Queen Mary is protected by this law; but should the King die, anyone who plotted against her could not be dealt with upon a charge of high treason, for her previous protection would be annulled by her husband's demise. She could not even marry again without the consent of the new monarch, which in this case would be her own son.

The King can do no wrong, but the Queen Consort can. The British laws would permit her creditors to sue her if they wished just as she could sue the humblest subjects in the realm. She can engage in business, although all documentary transactions must be signed by her as Queen Consort. In business the consort is not recognized as the spouse of the King, but as a person capable of conducting her own affairs without the interference of the reigning monarch; she cannot command his interference, and would have to settle a dispute in the ordinary way.

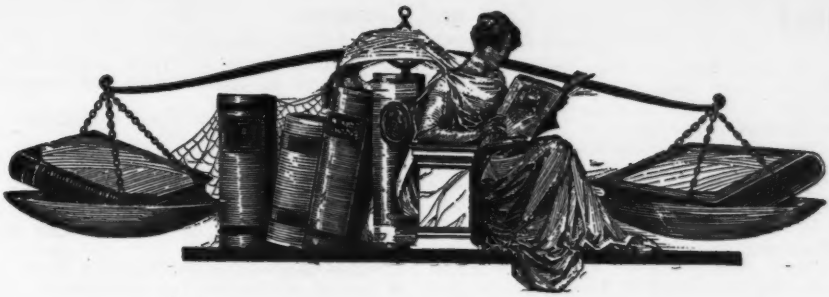
All state documents are signed by the King, not by the Queen Consort; for she has no authority to take an active part in state matters. Should the King be ill, however, he can appoint her his proxy, and, by a special license, grant her powers equivalent to those of his own,—her signature, then appearing at the foot of official documents, would be as effectual as if they were signed by the King himself.

One peculiar privilege of the Queen is that she is the only married woman in the country who is not amenable to the Married Woman's Property Act, though she is bound by every other law.

The King is in no way responsible for his wife's debts. To define this law more clearly: It was decided during the reign of King William IV. that the Queen Consort should have a separate revenue; formerly it had been customary for her to have one tenth of her husband's income, which was called "Queen's money," until the act was passed authorizing a grant apart from the King's, to be made her annually.

As the wife of the King she is exempt from all taxes, though she is recognized as a public person and is represented in the courts by her own attorney and solicitor general.

She can at no time interfere in ecclesiastical matters, nor can she reprieve a prisoner nor sign a death warrant. Although in the eye of the law she is a subject of the King, she is entitled to all his honors as long as he lives, but upon his death her former privileges vanish.



New Books and Periodicals

A man is but what he knoweth.—Bacon.

"Memoir, Autobiography and Correspondence of Jeremiah Mason." (Lawyers' International Publishing Co., Kansas City, Mo.) Prices, $6.75 in vellum cloth; $7.50 in Holliston mills buckram, gilt top, autograph on cover; $10.00 in ¾ morocco, full gilt, autograph on cover (100 copies only).

This reproduction of the Memoir of Jeremiah Mason was undertaken because of the exceeding scarcity of the first edition, printed by the family 45 years ago in a limited edition, and in order that busy practitioners might gather help and inspiration from this delineation of the career of the man whom Daniel Webster declared to be America's greatest lawyer. "I would rather encounter all the lawyers combined against whom I have tried cases, than meet Mr. Mason alone and single-handed." "While not an orator, in the common acceptation of that term," states G. J. Clark in the foreword, "he ranked not with Erskine, Brougham, Pinckney, Webster, and Choate, but rather with the three greatest verdict winners in the history of the profession,—Dunning, Scarlett, and Luther Martin."

"The country owes much to Jeremiah Mason," states Hon. Oliver H. Dean, "and a generous and gracious task is performed when new attention is called to his worthy and useful life."

It is certain that the profession will gladly take advantage of the opportunity to obtain copies of the limited editions of this interesting and admirable Memoir.

"A Manual on Land Registration." By Arthur Gray Powell, LL.D. (The Harrison Company, Atlanta, Ga.) $6.50 delivered.

Land Registration Acts (or Torrens Systems as they are frequently called) are now in force in a large number of the American states. Under these systems land is converted into a liquid asset and becomes as quickly and easily negotiable as if it were a share of stock.

The Land Registration Act, adopted by the General Assembly of Georgia, 1917, went into effect January, 1918. Judge Powell's very able work presents a comprehensive explanation of the Georgia Act, which is founded on the Uniform Land Registration Act on which practically all the American acts are based. The volume also includes a complete annotated copy of the Land Registration Act; also an appendix, including an annotated copy of the Uniform Land Registration Act.

This manual has been so written as to give answer in a practical way and in simple style, to those questions which are bound to arise in the minds of everyone seeking information on the subject to which it relates. It will prove serviceable to laymen as well as lawyers.

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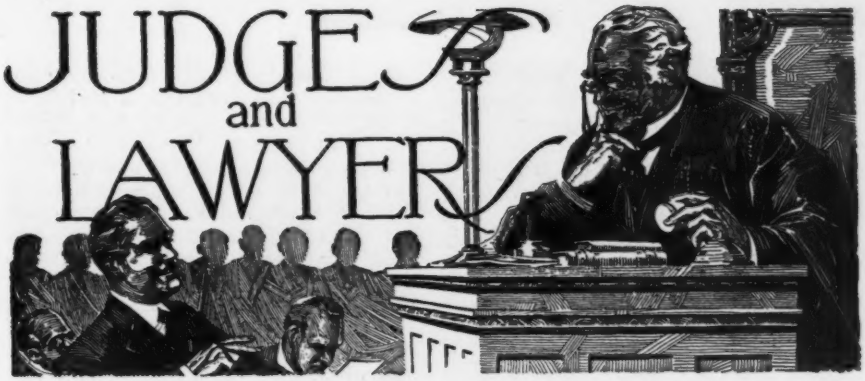
THE LATE SENATOR HUSTING



A Record of Bench and Bar

Hon. Paul O. Husting

Former Senator from Wisconsin

The late Senator Husting, of Wisconsin, was a man of rare ability and of undaunted and unflinching patriotism. He was fatally wounded while duck hunting. A great loss was sustained by the country in his untimely death.

He was born at Fond du Lac, Wisconsin, April 25, 1866, and removed with his parents to Mayville in 1876. He attended the common schools of Fond du Lac and Dodge counties until his sixteenth year, then be became clerk in a general store, clerk in the postoffice, and then railway postal clerk, successively, and then clerk in the office of secretary of state.

He entered the University of Wisconsin in 1895. In December of that year he passed the state bar examination and commenced the practice of law at Mayville, Wisconsin, in which business he has been engaged ever since.

Senator Husting came of pioneer stock, his mother's father, Solomon Juneau, having been the first white settler and the founder of Milwaukee.

He was elected district attorney in 1902 and again in 1904; in 1906 he was elected state senator from the thirteenth senatorial district, and re-elected in 1910. He was chosen to the United States Senate in 1914 to succeed Isaac Stephenson. His term of office would have expired March 3, 1921.

Although a new man in the United States Senate he attracted nation-wide attention. In the last session of Congress he was appointed to membership on some of the more important committees.

Senator Husting was one of the most aggressive supporters of President Wilson and aided him by speeches in the Senate and by public addresses in Wisconsin in the time between the severance of diplomatic relations with Germany on February 3, 1917, and the declaration of a state of war on April 6. Before that time he had denounced in the Senate the activities of the German Embassy, which, he declared, was trying to stir up dissension in this country.

"My idea of loyalty," said Senator Husting in a speech delivered before the United States Senate on April 14, 1917, "consists in aiding and supporting the government, not in attacking and abusing it. It is my idea that those who now are raising their voices against the government, if they want to emulate the example of their progenitors in the Civil War, should encourage and support their government, and not harass it nor obstruct it.

"There is only way in which we can act, and that is to act in unison. We have got to have a leader, and we have got to agree with that leader when we

are dealing with a foreign nation; otherwise we are not a country, but a mass of individuals that will fall easy prey to any united force such as any large country in Europe can bring against us. I say that while we do not have to ask any man's judgment and take it for our own, yet within reason and within bounds, if this country is to be perpetuated, if it is to continue to exist, we must have team work, we must act together, we must pull together whenever a foreign foe raises its head against us. 'United we stand, divided we fall.' The danger now is right at our door.

"The question with which we are now confronted is, not whether we want war; the question is, 'Shall we suffer war to be made upon us without defending ourselves?' We are not the aggressor. We are not attacking anybody, but we are being attacked. Our ships are being attacked, our citizens and our ships carrying our flag are being sent to the bottom of the sea. In other and even more sinister ways our country has been warred upon for a period of more than two years by agents in the pay of a foreign government.

"If Germany wins this war she 'will bestride this narrow world like a colossus.' She will be all powerful, all dominating. If our great nation shrinks now from asserting and maintaining our honor and our rights, will we not, when Germany shall have swept her enemies from land and sea (in the event that she will be successful), shrink from engaging this colossus should she then still continue to bar us from the present sea zone of death, or when, perchance, it shall be her pleasure to bar us from all the seas and oceans of the world?

"With these solemn words ringing in her ears, with full knowledge of what her actions meant, repudiating her solemn promise made to us, repudiating the laws of nations and of humanity, the laws of God and man, in defiance of the nations of the world and the opinions of mankind, in defiance of the United States, of her President, and of her people, Germany again threatened to resume and has resumed her ruthless, unrestrained, and barbarous submarine warfare. She is not afraid to do wrong. Shall this great nation be afraid to do right and to maintain its own rights? Shall we condone or indorse another country's wrong against us and repudiate our country's right? No; we will not do that! We must not do that! Our honor, our rights, our lives—nay, our very safety and welfare will not permit us to do that. No nation can long endure which permits its rights to be deliberately, wantonly, defiantly, and insultingly trampled upon. No nation can long endure or should endure which fails or refuses to defend the lives of its defenders!"

After receiving his fatal wound Senator Husting left these parting words: "Tell them I did the best I knew how."

Hon. Irvine L. Lenroot was elected Senator Husting's successor on April 2, after a historic campaign which attracted nation wide attention.

Death of Justice Potter

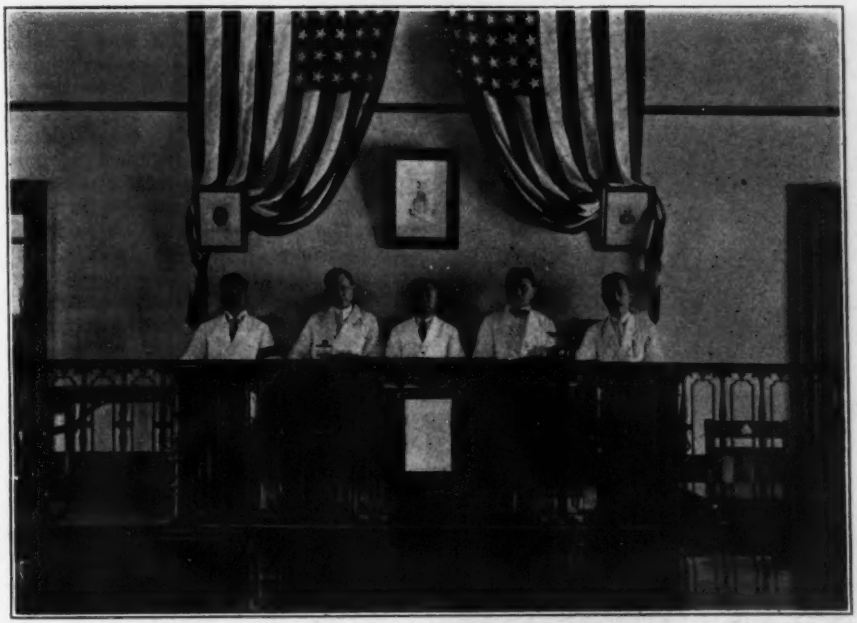
William Plumer Potter, supreme court justice of Pennsylvania, died at his home in Swarthmore on April 14.

Justice Potter was born while his father was preaching in Iowa, in Jackson county, April 27, 1857. After receiving a public school education in Iowa and Baltimore, Md., he entered Lafayette College, Easton, Pa., but, owing to a change in plans, he did not complete the college course. However, in 1907 that college conferred upon him the doctor of laws degree.

In 1884 he was admitted to the bar of Allegheny county, Pa., and formed the law firm of Stone & Potter. He gave his attention chiefly to corporation law and soon became counsel for a large number of companies.

Elected to the governorship, his partner appointed him to the supreme bench in 1900 for a term expiring a year later. He was then elected to a twenty-one year term.

"Justice Potter's death will be a great loss to the supreme court of Pennsylvania," said Justice Robert von Moschzisker after learning of his death. "He was a thorough lawyer and a most industrious and conscientious judge."



COURT OF FIRST INSTANCE OF THE CITY OF MANILA

The Judges from left to right are: Hon. Pedro Concepcion, Hon. George A. Harvey, Hon. Simplicio del Rosario, Hon. J. L. Ostrand and Hon. M. V. del Rosario.

A PHILIPPINE COURT.

AMONG the tribunals of superior jurisdiction in the Philippine Islands are the Courts of First Instance.

"Judges of First Instance and Auxiliary Judges," states Hon. George A. Malcolm in his work on "The Government of the Philippine Islands," "are appointed by the Governor-General with the advice and consent of the upper branch of the Philippine Legislature to serve until they shall reach the age of sixty-five years. Twenty-six judicial districts are constituted. One Judge of First Instance is assigned to each district except the city of Manila which has four branches. Seven Auxiliary Judges of First Instance are designated for as many groups. Their functions are to assist the Judges of First Instance, to substitute for a Judge of First Instance, and temporarily to supply any vacancy that may occur. Court is held at the provincial capital, except when otherwise provided. Sessions are convened on all week days, when there are cases ready for trial or other court business to be despatched. The Court is in regular session except during the months of May and June during which Judges are assigned to vacation duty. Each Court has a Clerk of Court, a Sheriff and a Fiscal. Its jurisdiction is both original and appellate."

In the city of Manila the functions of the Sheriff are exercised by the Clerk of the Court of First Instance.

A Register of Deeds is maintained also for the city. The Fiscal performs the duties of this office under the supervision of the Judges of First Instance.

The Judges of this Court sit singly presiding over different branches. There is considerable litigation in Manila and only by the exercise of great industry are the Judges enabled to clear the calendar.

Captain Ackerly

A Co-op Editor Who Is With the Colors

Among the members of the legal profession who left civil for military life upon the declaration of war, none was better fitted for a military career than Captain William White Ackerly. It is not to be wondered at, therefore, that he should succeed in that life and should receive his commission as captain while still considerably under the age of thirty years.

After the manner of many of our presidents, Captain Ackerly was born in Virginia. He received his education in the public schools of that state, graduating from the Lexington High School in the class of 1908. Thereafter he attended Washington and Lee University School of Law at Lexington and graduated with the degree of LL.B. from that institution in the class of 1912. Throughout his college course, Captain Ackerly was interested in athletics. His popularity among his classmates is evidenced by the fact that he was elected to the vice presidency of the Senior Law Class. He was admitted to the Virginia bar in June, 1912, and in the fall of that year became a member of the Editorial Staff of The Lawyers Co-operative Publishing Company at Rochester, New York.

Captain Ackerly is a skilled horseman, and in January, 1915, he enlisted in the famous Troop H of the New York Cavalry. He was appointed corporal in this organization in June, 1915, and sergeant in October, 1915. With this organization he saw nine months' service on the Mexican border in 1916–17, during which time he was stable sergeant of the troop.

Upon the breaking out of war with Germany, he was selected by those in charge to organize in Rochester a company of the Ammunition Train of the New York Division, National Guard. After doing considerable work in perfecting this organization, ill health overtook him, and for a time he was compelled to abandon his duties. Upon recovery he was in July, 1917, commissioned First Lieutenant in the Field Artillery and assigned to command Company D of the Ammunition Train at Syracuse, New York, a part of which company he afterwards recruited in Rochester. He remained in command of this unit until the reorganization of the division last October, when surplus captains from the First Cavalry were put in command of the reorganized company of the Ammunition Train.

His duties in the Ammunition Train require, among other things, full knowledge in regard to motor trucks. In acquiring this information, Captain Ackerly was sent to the Government Auto-

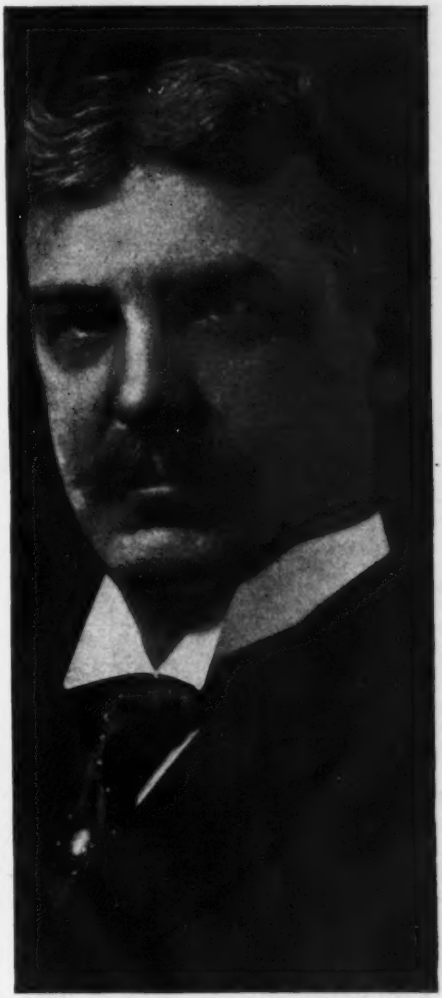
mobile School at Kenosha, Wisconsin, in November, 1917. Since January, 1918, he has been senior instructor on motor transportation in the Division School of the Line at Camp Wadsworth, Spartanburg, South Carolina.

In March, 1918, he received his commission as Captain in the National Guard and was assigned to command Company F, 102nd Supply Train, which is a motor organization to transport supplies to the firing line.

William Lawrence Clark

LAW WRITER

By DeWitte B. Wyckoff



THE bench and bar of the United States have been greatly benefited by the fact that William Lawrence Clark devoted his lifetime to law writing, and have sustained a distinct loss by reason of his untimely death on the 2d day of March in the fifty-fifth year of his age. Although he was for a short period a lecturer on criminal law and criminal procedure in the Catholic University of America, he is best known by his texts on contracts, corporations, criminal law, and criminal procedure. Besides this he is the author of a one volume treatise on elementary law, and the compiler of a case book on criminal law, and of several volumes of the Probate Reports Annotated, which contain monographic notes of recognized merit. His later years have been employed in legal encyclopedic work for both the Edward Thompson Company and The American Law Book Company, to a large extent as revising editor.

Thomas A. Street, author of several well-known works of the law and formerly professor in the Law Department of the University of Missouri, states that legal "encyclopedic work, when done in good form by a competent author, represents a highly specialized effort of mind, and is as truly entitled to be called a scientific production as any other work resulting from the exercise of the skilled reasoning faculties. The preparation of an article . . . requires that the authorities should be gathered and carefully resolved, or analyzed, into their ultimate elements, and that the constructive faculties should be brought into play in order that these elements may be woven together in an orderly and proper way. . . . The proper accomplishment of the task taxes the full ingenuity and resources of the most skilful. It is truly a tedious and delicate labor."

The value of Mr. Clark's published works is attested by the many judicial quotations and citations, and by the favorable comments of the book reviewers.

These reviewers attest in no uncertain terms that the work of Mr. Clark is concise, clear, and accurate, characterized by good judgment, a sense of proportion, and an enviable literary style. Of the text on Contracts it is said: "The author has well digested his material and in consequence is able to write with great freedom and grace. The book is an interesting one to read, which is more than can be said of most of the modern legal mosaics, which the practitioner is obliged to use in his daily work."

The Harvard Law Review states, in reviewing Clark and Marshall on Corporations, which is almost entirely the work of Mr. Clark, that "a clear, concise, accessible, and complete discussion of the whole field of the law of private corporations is most essential, not only for the present understanding of the subject, but even more as an aid to its future development. The present work is a most successful attempt to meet this need. . . . Each principle is clearly stated and its application made to the many different situations that may arise. Often concrete illustrations are used for greater clearness. Especially upon the points where the authorities are in conflict is the treatment clear and convincing. The conflicting views are carefully stated and the results of each are shown. The question at issue is reduced to its lowest terms and the fundamental point of difference thus indicated. The authors then briefly and almost uniformly with sound reasoning point out what they deem the true guiding principle and the direction in which its adoption would lead. . . . The latter is an important contribution to the literature of the subject, not so much from any new theory that it presents, as from its careful analysis and criticism of the conflicting views. . . . The whole plan, both in its conception and its achieve nent, renders the book an eminently practical treatise, and one of the very character most needed in dealing with the countless important questions which are constantly arising from the complicated system of corporations that rules the business world of to-day."

Mr. Henry E. Randall, editor in chief of the West Publishing Company, writes that Mr. Clark "had a peculiar bent for the work which he made his life work. I have had experience with hundreds of lawyers in this kind of work, and I never knew one who had such a capacity for going to the root of things quickly and stating his conclusions from a wide reading of cases and commentaries, in language most lucid and precise. His mind was wonderfully quick and capacious. Withal he had a delicacy and fineness of perception."

Honorable Frank Irvine, formerly dean of the Cornell Law School and now a Public Service Commissioner of the state of New York, says of Mr. Clark that "he always displayed an intimate and deep-seated knowledge of all subjects which he undertook to discuss. He dealt frankly and honestly with his material, and did not deceive himself or others by any effort, conscious or otherwise, to distort the real significance of authorities into a support of his own views as to what the law ought to be. When he reached a conclusion he stated it in clear and definite terms. When he wrote something you knew exactly what it meant, and it was very sure to be good law."

In ancestry as well as in sentiment Mr. Clark was eminently American. Among his ancestors were William Lawrence, from whom Mr. Clark received his name, one of the patentees of Flushing, Long Island, Colonel Francis Peyton, Major Stuart and Dr. Cornelius Baldwin, all three of whom were engaged in the American Revolutionary War. Mr. Clark was also a descendent of John Brown, first chancellor of the Staunton district in Virginia, and of Briscoe Gerard Baldwin, who was from 1842 to 1852 a judge of the Virginia Supreme Court. Perhaps the most interesting of the forebears was John Gilbert Clark, who when eight years old was stolen by some sailors and taken to sea on the Ranger, which was the first vessel to fly the American flag. Later a vessel of which he was captain and part owner was captured by a French privateer. He had the aid of Lafayette in prosecuting his claim against the French government, and when the

American government assumed responsibility for these claims he placed the matter in the hands of Daniel Webster.

The father of Mr. Clark was Judge William Lawrence Clark, of Winchester, Virginia, and his mother Mary Johnson Stuart, a first cousin of General "Jeb" Stuart of the Civil War.

Mr. Clark was married in 1891 to Miss Helen Foley, and has had two children, Mary Stuart and Helen Louisa, the former of whom died at the age of nine years. He has always been devoted to his home and very happy in his home life.

Mr. Clark was a person of attractive personality and fine courtesy, a true gentleman. He was always willing to render a service even at considerable personal sacrifice. Many of his evenings have been spent in tutoring persons who were making their first attempts at law writing, and he has even gone so far as to transmute apparently hopeless work into an acceptable article, because the original writer had a family and needed the compensation. His friends have truly stated that "he was likable and lovable," and that he has left a "place that will be hard to fill in one's list of real friends."

Judge L. B. Hightower, Sr.

PROMINENT JURIST AND PIONEER TEXAN

By A. D. Lipscomb

THERE recently died near Beaumont, Texas, a most remarkable judicial character. He has been for thirty years judge of a district court, making the rounds of some ten or twelve county seats twice a year. His home was near a very small town, in what is known as the "Big Thicket," Liberty county, Texas, and he was quite as famous as a hunter. This was Judge L. B. Hightower, Sr., of Cleveland, Texas, Judge of the Ninth Judicial District. The deceased was himself a son of one district judge and father of another who later became chief justice of a court of civil appeals, having appellate jurisdiction over him. He was gifted with great and powerfully moving eloquence, as was shown in the few instances where he was called upon to speak, and certainly would have distinguished himself as a trial lawyer, if he had remained in the practice. But he had no vanity about speech, and from the bench his rulings were all as brief and pointed as his hearings were patient. He was beloved and honored as much by lawyers outside of his district as within, and his fame extended throughout the length and breadth of the state.

On his death there was a special meeting of the bar of Beaumont, and resolutions were prepared by Mr. F. D. Minor, which embraced the following paragraph, which, I believe, will be a delight to the mind of anyone who appreciates the qualities of a great judge. If these words could be carefully read and considered by every judge in the United States, the writer verily believes the standard of judicial excellence would be materially improved, for they constitute an appraisement of a great judge by a great lawyer.

The passage referred to is as follows:

"For thirty years, and more, twice a year in each county in his district, he came to do justice, with no purpose but to do his duty; to bear constantly in mind that 'justice is the virgin gold of the mine that passes for its intrinsic worth in every case but is subject to a varying value according to the scales through which it passes. Law is the coin from the mint with its value ascertained and fixed, with the stamp of the government upon it which insures and denotes its current value,' to administer the law as perfectly as an upright and great judge

could administer it; to give judgment between litigants, whether man and man or man and corporation, without bending the rules of law, with an eye single to the task of applying those rules to the facts of the case; to work without weariness; to listen without impatience; to illustrate the great blessing to the people of having as district judge a ripe jurist and a great lawyer as the pillar and basis of justice; to be the ornament of the bench and a pattern to all judges; to love goodness and all good men; to be tolerant and patient of everything but meanness; to be indifferent to the riches, pomps, and vanities of the world; to be an exemplar, in private and official life, of honest plainness and simplicity; to surround his court with universal love, honor, and praise; to give, everywhere and at all times, his strength to his country, his sympathy and help to the suffering, his heart to every public task; to deserve, and win, from the hearts and lips of all right-minded men, not that applause which is run after, but that which follows duty well done."

Few of the members of the bar of the district remember him as a lawyer, but his oldest son, now an appellate court judge, who looks out from his chambers on miles of paved streets, on wharves where ocean-going ships tie up 30 miles inland, and where factories hum and ships by the score are building, recalls him as a backwoods lawyer, returning to his home from court with a string of ponies taken as fees for his services as advocate, so rapidly have material conditions changed.

Judge Hightower was in the war between the states, serving four years in Walker's division. At no time during the four years was he wounded.

An evidence of the indomitable spirit and the cheerfulness which went with it in Judge Hightower's make-up was shown when he conquered the "white plague." It was back in the '70's when the doctors told him that his lungs were infected by the dread germs, and that the great open was his only hope.

Accepting their terms, he endeavored to make the best of them. He gave up the town life, going into the "Big Thicket," and there becoming a notable hunter. Afterwards he was quoted as saying: "I am a bear hunter by profession, and practise law for recreation." The lore and traditions of his hunting are known to thousands. He bore scars of these battles in the wilds. Frequently, they were hand encounters. He outlived the doctors.

Until the creation of the seventy-fifth judicial district, which took in Chambers county, Judge Hightower had no vacation periods. His aptitude for work, and his gift of mental incision into the kernel of the matter in hand frequently allowed him to borrow a few days from "the law's delay."

"Law is nothing other than educated common sense—except when interfered with by legislative enactment," was one of his definitions, according to Mr. W. E. Orgain.

Everywhere his passing was mentioned with sincere regret—as of something lost that could not be replaced. Missed by the aged to whom his presence ever has been a consolation, and by the thousands of the younger who have grown up within the benign influence of his exemplary life, Judge Hightower lived not in vain.

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